UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
JOHN F. KENNEDY FEDERAL BUILDING
BOSTON, MASSACHUSETTS 02203-0001

CD002

June 11, 1997

Honorable Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

Re: Referral of CERCLA Settlement — Bennington Municipal Landfill Superfund Site (Bennington, Vermont)

Dear Ms. Schiffer:

This letter refers to the United States Department of Justice a proposed non-time-critical removal action ("NTCRA") settlement for the Bennington Municipal Landfill Superfund Site in Bennington, Vermont (the "Site"). This proposed settlement includes the performance and funding of the NTCRA — capping the Site and containing Site wastes — as well as implementation of a wetlands restoration and education project approved by the U.S. Department of the Interior ("DOI") and the State of Vermont. Most of the defendants are resolving their liability as de minimis parties.

Enclosed with this letter is a copy of the proposed Consent Decree, signed by me and the settling PRPs, as well as a Litigation Report and Settlement Analysis. I urge you to review and approve this proposed CERCLA settlement, and to lodge it with the Federal District Court for the District of Vermont.

The terms of the proposed settlement are summarized in the Litigation Report. However, I would like to call your attention to several key features. First, the settlement falls under EPA's Superfund administrative reforms calling for compensation of orphan shares, adoption of PRP allocations, and protection of small parties. Also, under the Decree, the Defendants expressly waive CERCLA Section 107 claims against municipal solid waste ("MSW") contributors and de micromis parties. Third, the resolution of natural resource damage claims and the release from liability associated with such interests by the State of Vermont is the first release of its kind ever provided by Vermont in a Superfund settlement.

Overall, under the settlement, EPA will bear approximately $1.7m in unrecovered costs which represent about 11% of the total value

of overall Site work costs or 17% of the value of the NTCRA. Since the orphan share is estimated to be more than 23% at this Site, the settlement provides EPA with a 100% recovery of the non-orphan share Site value in terms of work and costs.

The Region has consulted throughout the negotiations with EPA Headquarters on this settlement. Pursuant to the June 17, 1989 Revision to CERCLA Civil Judicial Settlement Authorities Under Delegations 14-13-B and 14-14-E, EPA Headquarters concurrence is not required for this settlement, so the Region is simultaneously sending a copy of these documents to the Office of Enforcement and Compliance Assurance.

The negotiating team for this Decree included Mark A. Gallagher from your office. If he or any other members of your staff have questions regarding this matter they should contact Hugh W. Martinez, Senior EPA Region I Attorney, at 617-565-4526.

Sincerely,

John P. DeVillars
Regional Administrator

Enclosure

cc: Steven A. Herman, Assistant Administrator
Office of Enforcement and Compliance Assurance
Patricia Mott, Office of Site Remediation Enforcement,
Regional Support Division, OECA
Mark A. Gallagher, DOJ Trial Attorney
Hugh W. Martinez, Senior Attorney
Edward M. Hathaway, Remedial Project Manager

CD002

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA and STATE OF VERMONT, Plaintiffs, v. TOWN OF BENNINGTON, ET AL., Defendants.	Civil Nos. _____ and _____

CONSENT DECREE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred and to be incurred by EPA and the Department of Justice for response actions at the Bennington Landfill Superfund Site in Bennington, Vermont ("Site"), together with accrued interest; and (2) performance of response work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Vermont (the "State") on July 24, 1995, of negotiations with potentially responsible parties regarding the implementation of the non-time critical removal action ("NTCRA") for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. The State of Vermont has also filed a complaint against the defendants, except for the State of Vermont Agency of Transportation, in this Court alleging that the defendants are liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and 10 Vt.Stat.Ann. Ch. 159, § 6615.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the federal natural resource trustee(s) on July 20, 1995, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

F. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the complaints, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on March 31, 1989, 54 Fed. Reg. 13,295.

H. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, 12 Potentially Responsible Parties ("PRPs") commenced in June 1991, a Remedial Investigation and Feasibility Study ("RI/FS"), pursuant to two Administrative Orders by Consent, EPA Docket Nos. CERCLA I-91-1093 and CERCLA I-91-1094, for the Site pursuant to 40 C.F.R. § 300.430.

I. Based upon the preliminary results of the RI/FS, the EPA required the parties to the RI/FS Administrative Orders to prepare an engineering evaluation and cost analysis ("EE/CA"). EPA signed an approval memorandum for the EE/CA in May 1994. Based upon the EE/CA, the public was provided the opportunity to comment on a proposed NTCRA for the Site.

EPA held a 45-day public comment period and a transcribed public hearing was held on September 13, 1994. After consideration of the comments received, EPA signed and issued an Action Memorandum on December 23, 1994, selecting the proposed alternative as the NTCRA. The NTCRA authorized the following response actions at the Site: (1) construction of a composite barrier low permeability cap; (2) excavation, from the drainage pond and underdrain discharge pipe, of those contaminated soils and sediments which exceed the action levels; (3) consolidation, in the existing landfill, of such contaminated soils and sediments; (4) gas management; (5) isolation of the upgradient groundwater from the landfill; (6) monitoring; and (7) post-removal site control of the completed NTCRA.

J. The decision by EPA on the NTCRA is embodied in the Action Memorandum, executed on December 23, 1994. Before EPA signed the Action Memorandum, the State had a reasonable opportunity to review and comment on the decision.

K. Based on the information presently available to EPA and the State, EPA and the State believe that the Work will be properly and promptly conducted by the Performing Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

L. The United States Department of Interior ("DOI") has identified and prepared a preliminary evaluation of potential damages relating to possible injury to, destruction of, or loss of Natural Resources under its trusteeship in connection with the Site.

M. Solely for the purposes of Section 113(j) of CERCLA, the NTCRA selected by the Action Memorandum and the Work to be performed by the Performing Settling Defendants shall constitute a response action taken or ordered by the President.

N. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

O. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State, and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54(b).

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaints, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States, on behalf of EPA, DOI and NOAA, the State, and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate status of a Settling Defendant including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Performing Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Performing Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Performing Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Performing Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Performing Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"Action Memorandum" shall mean the decision document signed by the EPA New England Regional Administrator on December 23, 1994, selecting the non-time-critical removal action for the Bennington Landfill Site.

"Active Remediation" shall mean any long-term remedial action using engineering controls or mechanisms to intercept, treat, or restore contaminated groundwater (e.g., groundwater extraction wells, slurry wall, interceptor trench, french drain) and shall not include any response action implemented as part of the Removal Action or any natural attenuation remedial action.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXVIII). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday. or Federal holiday, the period shall run until the close of business of the next working day.

"*De Minimis* Defendants" shall mean those parties listed in Appendix E who execute this Consent Decree, unless disqualified from participating as *De Minimis* Defendants pursuant to Paragraph 105 of this Consent Decree.

"DOI" shall mean the United States Department of Interior and any successor departments, agencies or instrumentalities thereof.

"DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities thereof.

"Effective Date" shall mean the effective date of this Consent Decree as provided in Paragraph 132.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.12.

"Federal Natural Resource Damages" shall mean damages recoverable under Section 107 of CERCLA for injury to, destruction of, or loss of any and all Natural Resources at the Site under the trusteeship of DOI or NOAA, including the costs of assessing such injury, destruction or loss.

"Future Response Costs" shall mean all costs, direct and indirect, not inconsistent with the NCP, other than Oversight Costs and Monitoring costs, incurred by the United States or the State after the effective date of this Consent Decree related to the Site, including but not limited to, costs that the United States and the State incur or may incur: (i) in developing any plans, reports or other items which Settling Defendants are required, but otherwise failed, to submit under this Consent Decree; (ii) in modifying any plan, reports, and other items by EPA pursuant to Section XI (EPA Approval of Plans and Other Submittals), except for costs related to the review of any such submissions; (iii) in implementing the Removal Action under Paragraph 95 this Consent Decree; (iv) in enforcing the terms of this Consent Decree; (v) in connection with Sections IX (Access and Institutional Controls) (including but not limited to, attorneys fees and any monies paid to secure access and/or to secure institutional controls, including the amount of just compensation), XV (Emergency Response), and XXI (Covenants not to Sue by Plaintiffs); and (vi) in connection with Section VII (Remedy Review).

"Institutional Controls" shall mean covenants, conditions, restrictions and other equivalent requirements and controls developed for one or more of the following purposes: (1) to restrict the use of groundwater at the Site; (2) to limit human or animal exposure to Landfill-related waste material at the Site; (3) to ensure non-interference with the performance, post-removal site control and monitoring of the cap, gas collection system, underdrain collection system, and the upgradient groundwater diversion system at or pertaining to the Site; and (4) to maintain the integrity and effectiveness of the cap, gas collection system, underdrain collection system, and upgradient groundwater diversion system that comprise the Removal Action and any other response actions at or pertaining to the Site.

"Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

"Monitoring Costs" shall mean response costs to be incurred by EPA or the State in connection with performance of monitoring described in Section VIII of the SOW.

"Monitoring" shall mean the monitoring to be performed by EPA or the State as described in Section VIII of the SOW.

"Municipal Solid Waste" shall mean all waste materials generated by households, including single and multi-family residences, and hotels and motels. The term also includes waste materials generated by commercial, institutional, and industrial sources, to the extent such wastes (A) are essentially the same as waste normally generated by households, or (B) are collected and disposed of with other municipal solid waste or sewage sludge as part of normal municipal solid waste collection services and, regardless of when generated, would be considered conditionally exempt small quantity generator waste under regulations issued pursuant to Section 3001(d)(4) of the Solid Waste Disposal Act (42 U.S.C. 6921(d)(4)). Examples of Municipal Solid Waste include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste. The term does not include combustion ash generated by resource recovery facilities or municipal incinerators, or waste from manufacturing or processing (including pollution control) operations not essentially the same as waste normally generated by households.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Natural Resource Damages" shall mean damages recoverable under Section 107 of CERCLA for injury to, destruction of, or loss of any and all Natural Resources at the Site under the trusteeship of DOI, NOAA, or the State, including the reasonable costs of assessing such injury, destruction, or loss.

"Natural Resources" shall have the meaning provided in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

"NOAA" shall mean the National Oceanic and Atmospheric Administration, and any successor departments, agencies, or instrumentalities thereof.

"NRD Restoration" shall mean all activities Performing Settling Defendants are required to perform under this Consent Decree and the NRD SOW.

"NRD Statement of Work" or "NRD SOW" shall mean the statement of work for implementation of the NRD Restoration, as set forth in Appendix C to this Consent Decree.

"NTCRA" or "Removal Action" shall mean the non-time-critical removal action selected by EPA in the Action Memorandum for the Site signed by the EPA New England Regional Administrator on December 23, 1994.

"NTCRA Design" shall mean those activities to be undertaken by the Performing Settling Defendants to develop the final plans and specifications for the NTCRA pursuant to the NTCRA Order and this Consent Decree.

"NTCRA Order" shall mean the Administrative Order on Consent for Removal Action Design, EPA Docket No. CERCLA-I-96-1014, addressing the design of the NTCRA at the Site.

"Oversight Costs" shall mean all costs, including but not limited to, direct and indirect costs, that the United States and/or the State (in its regulatory capacity and not as a PRP) incur on and after the effective date of the NTCRA Order in reviewing plans, reports and other items pursuant to the NTCRA Order or this Consent Decree, verifying the Work, or otherwise overseeing the NTCRA Order or this Consent Decree, including but not limited to, payroll costs, contractor costs, travel costs, and laboratory costs. Oversight Costs do not include costs related to performance of monitoring activities as described by Section VIII of the SOW.

"Owner Settling Defendant" shall mean the Town of Bennington, Vermont.

"Owner, Operator, or Lessee of Residential Property" shall mean a person who owns, operates, manages, or leases Residential Property and who uses or allows the use of the Residential Property exclusively for residential purposes.

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States, the State of Vermont, and the Settling Defendants.

"Past Response Costs" shall mean all costs, including but not limited to, direct and indirect costs, that the United States and/or the State incurred and/or paid at or in connection with the Site until the effective date of the NTCRA Order, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a), through such date. Past Response Costs shall not include costs recoverable under two Administrative Orders on Consent for the RI/FS, U.S. EPA Docket Nos. CERCLA I-91-1093 and CERCLA I-91-1094, or the NTCRA Order.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the NTCRA, set forth in Section V.A.5 of the Action Memorandum and Section IV of the SOW.

"Performing Settling Defendants" shall mean those parties who have performed, or who will perform response actions at the Site pursuant to the NTCRA Order and this Consent Decree. A list of those parties is attached in Appendix F.

"Plaintiffs" shall mean the United States and the State.

"Post-Removal Site Control" or "PRSC" shall mean all activities required to maintain the integrity and effectiveness of the NTCRA as required under the Post-Removal Site Control Plan approved or developed by EPA pursuant to this Consent Decree and Section VII of the Statement of Work (SOW).

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

"Residential Property" shall mean single or multi-family residences, including accessory land, buildings, or improvements incidental to such dwellings, which are exclusively for residential use.

"Response Costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

"RI/FS Orders" shall mean the Administrative Orders by Consent for the performance of the RI/FS and for the recovery of costs relating to the RI/FS, U.S. EPA Docket Nos. CERCLA I-91-1093 and CERCLA I-91-1094, respectively, entered into by EPA and the following parties in 1991: Banner Publishing Corporation, Town of Bennington, Bennington Iron Works, Inc., Bijur Lubricating Corporation, Chemical Fabrics Corporation, Courtaulds Structural Composites, Inc., East Mountain Transport, Environmental Action, Inc., Eveready Battery Corporation, G.C.D.C., Inc., Johnson Controls, Inc., and Textron, Inc.

"Section" shall mean a portion of this Consent Decree identified by a roman numeral.

"Settling Defendants" shall mean those Parties identified in Appendix E (De Minimis Defendants), and Appendix F (Performing Settling Defendants).

"Sewage Sludge" means solid, semisolid, or liquid residue removed during the treatment of municipal waste water, domestic sewage, or other waste water at or by publicly owned or federally owned treatment works.

"Site" shall mean the Bennington Landfill Superfund Site, encompassing approximately 28 acres of land located on Houghton Lane approximately three miles north of the town center in Bennington, Vermont, including the approximately 15 acres comprising the landfill itself, the associated contaminated soils and sediments in the drainage pond and underdrain, the related groundwater and surface water contamination, and all areas in close proximity to the contamination necessary for implementation of the NTCRA, Post-Removal Site Control, or Site Monitoring.

"Small Business" shall mean any business entity that employs no more than 100 individuals and is a "small business concern" as defined under the Small Business Act (15 U.S.C. 631 et seq.).

"Small Nonprofit Organization" shall mean any organization that does not distribute any part of its income or profit to its members, directors, or officers, employs no more than 100 paid individuals at the involved chapter, office, or department, and was recognized as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code of 1986.

"State" shall mean the State of Vermont, acting through its Agency of Natural Resources.

"State Natural Resource Damages" shall mean damages recoverable under Section 107 of CERCLA for injury to, destruction of, or loss of any and all Natural Resources at the Site under the trusteeship of the State, including the costs of assessing such injury, destruction or loss.

"State Settling Defendant" shall mean the State of Vermont Agency of Transportation.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the NTCRA Design, Removal Action, and Post-Removal Site Control at the Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

"Supervising Contractor" shall mean the principal contractor retained by the Performing Settling Defendants to supervise and direct the implementation of the Work under this Consent Decree.

"Supplemental Institutional Controls" shall mean Institutional Controls (other than those which are required pursuant to Paragraph 26 below) that are developed, requested, or approved by EPA for one or more of the following purposes: (1) to ensure non-interference with the performance, operation and maintenance of any response actions at or pertaining to the Site, other than the response action selected in the Action Memorandum; (2) to ensure the integrity and effectiveness of any response actions at or pertaining to the Site, other than the response action selected in the Action Memorandum; and (3) to otherwise ensure the protection of public health, welfare, or the environment at and in connection with the Site.

"United States" shall mean the United States of America.

"VTDEC" shall mean the Vermont Department of Environmental Conservation and any successor departments or agencies of the State.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); and (3) any "hazardous material" under 10 Vt. Stat. Ann. § 6602(16).

"Work" shall mean all activities Performing Settling Defendants are required to perform under this Consent Decree, except the NRD Restoration and the activities required by Section XXVI (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties

a. As to the Performing Settling Defendants The objectives of the Parties in entering into this Consent Decree are to protect public health and welfare and the environment at the Site by the design and implementation of response actions at the Site by the Performing Settling Defendants, to reimburse certain Response Costs of the Plaintiffs, and to resolve the claims of Plaintiffs against Performing Settling Defendants as provided in this Consent Decree.

b. As to the De Minimis Defendants The objectives of the Parties are:

i. to reach a final settlement with the *De Minimis* Defendants with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), that allows *De Minimis* Defendants to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for injunctive relief with regard to the Site and for Response Costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

ii. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a number of potentially responsible parties from further involvement at the Site; and

iii. to obtain settlement with *De Minimis* Defendants for their fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and by private parties, and to provide for full and complete contribution protection for *De Minimis* Defendants with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

6. Commitments by Settling Defendants

a. *De Minimis* Defendants shall make the payments as set forth in Appendix G, and Performing Settling Defendants shall finance and perform the Work and the NRD Restoration in accordance with this Consent Decree, the Action Memorandum, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Performing Settling Defendants and approved by EPA pursuant to this Consent Decree. Performing Settling Defendants shall also reimburse the United States and the State for Future Response Costs and Oversight Costs as provided in this Consent Decree.

b. The obligations of Performing Settling Defendants to finance and perform the Work and the NRD Restoration and to pay amounts owed the United States and the State under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Performing Settling Defendants to implement the requirements of this Consent Decree, the remaining Performing Settling Defendants shall complete all such requirements.

7. Compliance With Applicable Law All activities undertaken by Performing Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Performing Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and State environmental laws as set forth in the Action Memorandum and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (*i.e.*, within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal, state or local permit or approval, Performing Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Performing Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work

provided the Performing Settling Defendants submitted timely and complete applications and took all other actions necessary to obtain such permit.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

9. Notice of Obligations to Successors-in-Title

a. With respect to any property owned or controlled by any of the Performing Settling Defendants that is located within the Site, within 15 days after the entry of this Consent Decree, each such Performing Settling Defendant shall submit to EPA for review and approval a notice to be filed with the Land Records of the Town of Bennington, Vermont, which shall provide notice to all successors-in-title that the property is part of the Site, that EPA selected a response action for the Site on December 23, 1994, and that a Consent Decree requiring the implementation of the response action by potentially responsible parties exists. Such notice(s) shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. Such notice(s) shall be filed within 10 days of EPA's approval of the notice(s). Performing Settling Defendants shall provide EPA with a certified copy of the recorded notice(s) within 10 days of recording such notice(s).

b. At least 30 days prior to the conveyance of any interest in property located within the Site, including but not limited to, fee interests, leasehold interests, and mortgage interests, the Performing Settling Defendant conveying the interest shall give the grantee written notice of this Consent Decree and any instrument by which an interest in real property has been conveyed that confers a right of access to the Site or any other property (hereinafter referred to as "access easements"), and any Institutional Controls in the form of deed restrictions that have been filed with respect to the property pursuant to Section IX (Access and Institutional Controls). At least 30 days prior to such conveyance, the Performing Settling Defendant conveying the interest shall also give written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree and access easements or Institutional Controls in the form of deed restrictions was given to the grantee. In the event of any such conveyance, the Performing Settling Defendants' obligations under this Consent Decree, including their obligations to provide or secure access and Institutional Controls, as well as abide by such Institutional Controls, pursuant to Section IX (Access and Institutional Controls), shall continue to be met by the Performing Settling Defendants. In no event shall the conveyance release or otherwise affect the liability of the Performing Settling Defendants to comply with all provisions of this Consent Decree. If the United States approves, after a reasonable opportunity for review and comment by the State, the grantee may perform some or all of the Work under this Consent Decree.

VI. PERFORMANCE OF WORK BY PERFORMING SETTLING DEFENDANTS

10. Designation of Supervising Contractor.

a. All aspects of the Work to be performed by Performing Settling Defendants pursuant to Sections VI (Performance of the Work by Performing Settling Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection or change of which shall be subject to disapproval by EPA.

after a reasonable opportunity for review and comment by the State. Unless already accomplished under the NTCRA Order, within seven (7) days after the effective date of this Consent Decree, the Performing Settling Defendants shall retain the services of a qualified and experienced Supervising Contractor for the purpose of performing the Work required by this Consent Decree in accordance with the terms and conditions of the Statement of Work. Within the same seven (7) day period, the Performing Settling Defendants shall notify EPA and the State in writing of the name, address, and qualifications of the proposed Supervising Contractor and the name and telephone number of the Supervising Contractor's primary contact person. The Performing Settling Defendants shall also notify EPA and the State of the identity and qualifications of any other contractor(s) (and of the identity only of any subcontractor(s)) to be used at the Site at least fourteen (14) days in advance of their performing any work under this Consent Decree. If at any time thereafter, Performing Settling Defendants propose to change a Supervising Contractor, Performing Settling Defendants shall give such notice to EPA and the State and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the State, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. The Supervising Contractor shall be a qualified and certified professional engineer with substantial expertise and experience in the cleanup of hazardous waste sites. EPA reserves the right to disapprove any contractor or subcontractor or other person engaged directly or indirectly by the Performing Settling Defendants to conduct work activities under this Consent Decree. If EPA disapproves the selection of any proposed contractor, the Performing Settling Defendants shall notify EPA and the State in writing of the name, address, and qualifications of another contractor within fourteen (14) days after receipt of the notice of disapproval.

c. The Performing Settling Defendants have designated a Project Coordinator who shall be responsible for the administration of all the Performing Settling Defendants' actions required pursuant to the NTCRA Order and this Consent Decree.

11. In order to expedite design of the NTCRA at the Site, Performing Settling Defendants have agreed to commence and perform design of the NTCRA pursuant to the NTCRA Order. Performing Settling Defendants shall perform the design of the NTCRA regardless of whether this Consent Decree is entered by the Court. Upon the effective date of this Consent Decree, this Consent Decree shall govern the performance of the Work by the Performing Settling Defendants, and all ongoing obligations existing pursuant to the NTCRA Order shall continue without interruption, shall be incorporated into this Consent Decree, and shall be enforceable obligations under this Consent Decree. Upon the effective date of this Consent Decree, all obligations, duties, burdens and sanctions arising under the NTCRA Order will be subject to enforcement pursuant to this Consent Decree, including but not limited to, stipulated penalties, retroactive to the effective date of the NTCRA Order, but no obligation, duty, penalty or sanction already performed or imposed under the NTCRA Order shall be required or imposed a second time under the Consent Decree, and the provisions of the Consent Decree and NTCRA Order shall be construed accordingly. Upon the effective date of this Consent Decree, all Oversight Costs incurred subsequent to the effective date of the NTCRA Order but prior to the entry of the Consent Decree shall be included in the estimation of Oversight Costs to be reimbursed or deducted in accordance with Section XVI (Reimbursement of Costs).

12. NTCRA. Upon the effective date of this Consent Decree, the Performing Settling Defendants shall commence the work detailed in the Statement of Work to perform the Removal

Action. The Removal Action shall be designed, constructed, and maintained to meet the Performance Standards. As detailed in the Statement of Work, and subject to the condition set forth in the preceding sentence, the Performing Settling Defendants shall design, construct, and/or perform:

a. a composite barrier low permeability cap with drainage controls;

b. the excavation of contaminated soils and sediments exceeding action levels from the drainage pond and underdrain discharge pipe area and consolidate them with the existing landfill;

c. a gas management system;

d. air monitoring activities as part of the Demonstration of Compliance Plan to verify that no air emissions occur which exceed applicable or relevant and appropriate state or federal limits or which represent an unacceptable threat to human health, until EPA approval of the Demonstration of Compliance Report;

e. for as long as required to meet the Performance Standards, collection of leachate and groundwater from the existing underdrain discharge and treatment off-site to remove contaminants, or treatment in some other manner previously approved by EPA under this Consent Decree and the SOW;

f. a structure (e.g., slurry wall or interceptor trench) to prevent groundwater in the water table aquifer from coming into contact with the landfill waste material;

g. Post-Removal Site Controls include operation and maintenance of the gas collection and treatment system, the multi-barrier cap, the leachate collection system, and the groundwater isolation system and the installation of any monitoring points necessary to evaluate the effectiveness of the NTCRA. These Post-Removal Site Controls shall be implemented to ensure the long-term effectiveness and integrity of each component of the NTCRA and shall continue for as long as required to meet the Performance Standards;

h. the installation of any water table acquifer monitoring points to evaluate the effectiveness of the NTCRA which are requested by EPA prior to the date of EPA approval of the Completion of Removal Action Report; and

i. implementation of institutional controls, including access restrictions, deed restrictions, land-use restrictions, groundwater use restrictions, or easements and/or other controls, including fencing, to prohibit the future use of the Site in any manner that would compromise the integrity of the cap and its related systems.

All Work performed by the Performing Settling Defendants shall be conducted in accordance with CERCLA, the NCP, applicable guidance documents provided by EPA, and the provisions of this Consent Decree including any standards, specifications, and time schedules contained in the Statement of Work or specified by the Remedial Program Manager ("RPM"). Subsequent to EPA's approval of the Completion of Removal Action Report pursuant to Paragraph 53 of this Consent Decree, the Performing Settling Defendants shall not be obligated to perform or reimburse EPA or the State for Monitoring required pursuant to Section VIII of the SOW or any

Monitoring which may be selected as part of any Record Of Decision. It is the intent of EPA and the VT DEC, subsequent to EPA's approval of the Completion of Removal Action Report, to perform such Monitoring specified in Section VIII of the SOW, namely, periodic assessment of ambient air quality, periodic sampling of the groundwater and air collection systems, and long-term monitoring of contaminant levels and water levels to evaluate the impact of the cap. Notwithstanding the above, performance of Monitoring by EPA and the VTDEC under the Action Memorandum is subject to EPA and VT DEC budgetary considerations and the availability of funds for such Monitoring. EPA and VTDEC will make good faith efforts to obtain funding to perform all such Monitoring. In the event that EPA or VT DEC do not perform the Monitoring due to budgetary constraints or for any other reason, neither the EPA nor VT DEC shall seek to require any of the Settling Defendants to perform or fund the Monitoring whether under this Consent Decree or through any other proceeding or action. Nothing in this Consent Decree requires, or shall be interpreted to require, obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

13. NRD Restoration. The Performing Settling Defendants shall perform the NRD Restoration required by the NRD SOW attached hereto as Appendix C, which is hereby incorporated into this Consent Decree.

14. Modification of the SOW or Related Work Plans.

a. If EPA determines that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the response action set forth in the Action Memorandum, EPA may require that such modification be incorporated in the SOW and/or such work plans. However, such a modification may be required pursuant to this Paragraph only to the extent that it is consistent with the scope of the response action selected in the Action Memorandum.

b. For the purposes of this Paragraph 14 and Paragraphs 52 and 53 only, the "scope of the response action selected in the Action Memorandum" is: Containment and isolation of Waste Materials (including landfill solid waste materials), collection, treatment (if necessary), and disposal of underdrain discharge, consolidation of PCB contaminated soils and sediments into the landfill, and minimization of migration of contamination from the source area. However, the "scope of the response action selected in the Action Memorandum" does not encompass Active Remediation.

c. If Performing Settling Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Paragraph 70 (record review) of Section XIX (Dispute Resolution). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Performing Settling Defendants shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

e. Except with respect to Monitoring, nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

15. Performing Settling Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, or any work plans related to the SOW constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the SOW and any related work plans will achieve the Performance Standards.

16. Performing Settling Defendants shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. The Performing Settling Defendants shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material are to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Performing Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Performing Settling Defendants following the award of the contract for NTCRA construction. The Performing Settling Defendants shall provide the information required by Paragraph 16.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

VII. REMEDY REVIEW

17. Periodic Review. Performing Settling Defendants shall conduct any studies and investigations as requested by EPA, after a reasonable opportunity for review and comment by the State, in order to permit EPA to conduct reviews of whether the Removal Action is protective of human health and the environment at least every five years.

18. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Removal Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

19. Opportunity To Comment. Performing Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of any review conducted pursuant to Paragraph 17 of this Consent Decree or Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

20. Performing Settling Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, the Performing Settling Defendants shall undertake such further response actions, other than Active Remediation, to the extent that the reopener conditions in Paragraph 89 or Paragraph 90 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Performing Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 89 or Paragraph 90 of Section XXI

(Covenants Not To Sue by Plaintiffs) are satisfied, (2) EPA's determination that the Removal Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Removal Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 70 (record review).

21. Submissions of Plans. If Performing Settling Defendants are required to perform the further response actions pursuant to Paragraph 20, they shall submit a plan for such work to EPA and the State for approval by EPA in accordance with the procedures set forth in Section VI (Performance of Work by Performing Settling Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

22. Performing Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all samples in accordance with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation," (EPA QA/R5; "Preparing Perfect Project Plans," (EPA /600/9-88/087), and subsequent amendments to such guidelines upon notification by EPA to Performing Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Performing Settling Defendants shall submit to EPA and the State for approval by EPA, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and any applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Performing Settling Defendants shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Performing Settling Defendants in implementing this Consent Decree. In addition, Performing Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Performing Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods include, but are not limited to, those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree. Performing Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Performing Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

23. Upon request, the Performing Settling Defendants shall allow split or duplicate samples to be taken by EPA and the State or their authorized representatives. Performing Settling Defendants shall notify EPA and the State not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA, after a reasonable opportunity for review and comment by the State. In addition, EPA and the State shall have the right to take any additional samples that EPA or the State deem necessary. Upon request, EPA and the State shall allow the Performing Settling Defendants to take split or duplicate samples

of any samples they take as part of the Plaintiffs' oversight of the Performing Settling Defendants' implementation of the Work.

24. Performing Settling Defendants shall submit to EPA and the State two copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Performing Settling Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA (or the State with respect to its own copies only) agrees otherwise.

25. Notwithstanding any provision of this Consent Decree, the United States and the State hereby retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

IX. ACCESS AND INSTITUTIONAL CONTROLS

26. a. Commencing upon the date of the EPA Regional Administrator's signature on this Consent Decree, the Performing Settling Defendants agree to provide the United States, the State, and their representatives, including EPA and its contractors, with access at all reasonable times to the Site and any other property to which access is required to implement this Consent Decree, the SOW, the response action selected in the Action Memorandum, and any remedy selected in a Record of Decision for the Site, to the extent that the property is owned by, or access to the property is controlled by, any of the Performing Settling Defendants, for the purpose of conducting any activity related to this Consent Decree including but not limited to, the following activities:

i. Monitoring the Work;

ii. Verifying any data or information submitted to the United States or the State;

iii. Conducting investigations relating to contamination at or near the Site;

iv. Obtaining samples;

v. Assessing the need for, planning, or implementing additional response actions at or near the Site;

vi. Implementing the Work pursuant to the conditions set forth in Paragraph 95 of this Consent Decree;

vii. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXV (Access to Information);

viii. Assessing Performing Settling Defendants' compliance with this Consent Decree; and

ix. Determining whether the Site is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by

Paragraph 27 of this Consent Decree, the Institutional Controls established pursuant to this Consent Decree, or Supplemental Institutional Controls.

b. If EPA so requests, in regard to property owned or controlled by one or more of the Performing Settling Defendants to which access is needed to implement this Consent Decree, the SOW, the response action selected in the Action Memorandum, or any remedy selected in a Record of Decision for the Site, for each parcel of property such Performing Settling Defendants shall record in the Land Records of the Town of Bennington, Vermont, access easements that grant to one or more of the following persons or entities, as directed by EPA:

(1) the United States, on behalf of EPA, and its representatives,

(2) the State and its representatives,

(3) the other Performing Settling Defendants and their representatives, or

(4) other appropriate grantees,

a right of access, running with the land, for the purpose of conducting any activity related to this Consent Decree including but not limited to, those activities listed in Subparagraph a. of this Paragraph. Performing Settling Defendants shall, within 45 days of EPA's request, submit to EPA for review and approval with respect to such property:

i. Draft access easements that are enforceable under the laws of the State of Vermont, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States* (1970) (the "Standards").

Within 15 days of EPA's approval and acceptance of such easements, Performing Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, file the easements with the Land Records of the Town of Bennington, Vermont. Within 30 days of filing the easements, Performing Settling Defendants shall provide EPA with a title insurance policy or other final title evidence acceptable under the Standards, and a certified copy of the original recorded easements showing the clerk's recording stamps.

c. To the extent that the Site or any other property to which access is required to implement this Consent Decree, the SOW, the response action selected in the Action Memorandum, or the remedy selected in a Record of Decision for the Site, is owned or controlled by persons other than a Performing Settling Defendant, Performing Settling Defendants shall use best efforts to secure from such persons access thereto for Performing Settling Defendants, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related

to this Consent Decree including but not limited to, those activities listed in Subparagraph a. of this Paragraph.

d. If EPA so requests, to the extent that the Site or any other property to which access is required to implement this Consent Decree, the SOW, the response action selected in the Action Memorandum, or the remedy selected in a Record of Decision for the Site, is owned or controlled by persons other than a Performing Settling Defendant, Performing Settling Defendants shall also use best efforts to secure from such persons the recordation in the Land Records of the Town of Bennington, Vermont, of access easements that grant to one or more of the following persons or entities, as directed by EPA:

(1) the United States, on behalf of EPA, and its representatives,

(2) the State and its representatives,

(3) the other Performing Settling Defendants and their representatives, or

(4) other appropriate grantees,

a right of access to the property, running with the land, for the purpose of conducting any activity related to this Consent Decree, including but not limited to, those activities listed in Subparagraph a. of this Paragraph. If such access easements are requested, Performing Settling Defendants shall proceed in accordance with the requirements of Subparagraph b. of this Paragraph.

e. For purposes of Subparagraphs c. and d. of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access and/or access easements. If any access required by Subparagraph c. is not obtained within 45 days of the date of lodging of this Consent Decree, or within 45 days of the date EPA notifies the Performing Settling Defendants in writing that additional access beyond that previously secured is necessary, or if any access easements requested by EPA under Subparagraph d. are not submitted to EPA in draft form within 45 days of a request by EPA for such easements, Performing Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps (including requests, offers and responses thereto) that Performing Settling Defendants have taken to attempt to obtain access or access easements. The United States may, as it deems appropriate, assist Performing Settling Defendants in obtaining access or access easements. Performing Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs incurred by the United States in obtaining access or access easements, including but not limited to, attorneys fees and the amount of monetary consideration paid. Such costs shall be considered Future Response Costs.

27. a. Commencing upon the date of the EPA Regional Administrator's signature on this Consent Decree, the Performing Settling Defendants also agree to refrain from using the Site (or any other property affected by the response action selected in the Action Memorandum or the remedy selected in a Record of Decision for the Site) in any manner, or engaging in any other activities, that would interfere with or adversely affect the integrity or protectiveness of the

response action selected in the Action Memorandum or the remedy selected in a Record of Decision for the Site.

b. If EPA so requests, in regard to property owned or controlled by one or more of the Performing Settling Defendants, at which Institutional Controls are needed, each such Performing Settling Defendant shall

i. grant to one or more of the following persons or entities, as directed by EPA:

(1) the United States, on behalf of EPA, and its representatives,

(2) the State and its representatives,

(3) the other Performing Settling Defendants and their representatives, or

(4) other appropriate grantees, and

ii. record in the Land Records of the Town of Bennington, Vermont, Institutional Controls in the form of deed restrictions, running with the land, that impose the obligations and restrictions identified in Subparagraph a. of this Paragraph or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the response action selected in the Action Memorandum or the remedy selected in a Record of Decision for the Site.

Performing Settling Defendants shall, within 45 days of EPA's request, submit to EPA for review and approval with respect to such property:

iii. Draft deed restrictions that are enforceable under the laws of the State of Vermont, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

iv. a current title commitment or report prepared in accordance with the Standards.

Within 15 days of EPA's approval and acceptance of such deed restrictions, Performing Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, file the deed restrictions with the Land Records of the Town of Bennington. Within 30 days of filing the deed restrictions, Performing Settling Defendants shall provide EPA with a title insurance policy or other final title evidence acceptable under the Standards, and a certified copy of the original recorded deed restrictions showing the clerk's recording stamps.

c. To the extent that the Site or any other property at which Institutional Controls are needed is owned or controlled by persons other than a Performing Settling Defendant, Settling Defendants shall use best efforts to secure a commitment by such persons

to abide by the obligations and restrictions established by Subparagraph a. of this Paragraph.

d. If EPA so requests, to the extent that the Site or any other property at which Institutional Controls are needed is owned or controlled by persons other than a Performing Settling Defendant, Performing Settling Defendants shall also use best efforts to secure from such persons the

i. granting to one or more of the following persons or entities, as directed by EPA:

(1) the United States, on behalf of EPA, and its representatives,

(2) the State and its representatives,

(3) the other Performing Settling Defendants and their representatives, or

(4) other appropriate grantees, and

ii. recordation in the Land Records of the Town of Bennington, Vermont, of Institutional Controls in the form of deed restrictions, running with the land, that impose the obligations and restrictions identified in Subparagraph a. of this Paragraph or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the response action to be performed pursuant to this Consent Decree. If such deed restrictions are requested, Performing Settling Defendants shall proceed in accordance with the requirements of Subparagraph b. of this Paragraph.

e. For purposes of Subparagraphs c. and d. of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of Institutional Controls in the form of commitments or deed restrictions. If any commitments required under Subparagraph c. are not obtained within 45 days of the date of lodging of this Consent Decree, or any deed restrictions requested by EPA under Subparagraph d. of this Paragraph are not submitted to EPA in draft form within 45 days of EPA's request for such deed restrictions, Performing Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps (including requests, offers and responses thereto) that Performing Settling Defendants have taken to attempt to obtain such commitments or deed restrictions. The United States may, as it deems appropriate, assist Performing Settling Defendants in obtaining such commitments or deed restrictions. Performing Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs incurred by the United States in obtaining such commitments or deed restrictions, including but not limited to, attorneys fees and the amount of monetary consideration paid. Such costs shall be considered Future Response Costs.

28. If EPA determines that land and/or water use restrictions in the form of state or local laws, regulations, ordinances or other governmental action are needed to implement the response action selected in the Action Memorandum or the remedy selected in a Record of Decision for the Site, ensure the integrity and protectiveness thereof, or ensure non-interference

therewith, Performing Settling Defendants shall cooperate with EPA's and the State's efforts to secure such governmental controls.

29. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

30. In addition to any other requirement of this Consent Decree, Performing Settling Defendants shall submit to EPA and the VTDEC 1 copy each of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Performing Settling Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Performing Settling Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Performing Settling Defendants shall submit these progress reports to EPA and the VTDEC by the fifteenth day of every month following the effective date of this Consent Decree until EPA approves the Completion of Removal Action Report. After EPA approval of the Completion of Removal Action Report pursuant to this Consent Decree, the Performing Settling Defendants shall submit to the EPA and the VT DEC one copy each of a written, quarterly progress report containing the above-listed information by the tenth day of each calendar quarter beginning in March, June, September and December of each year concerning activities undertaken by the Performing Settling Defendants pursuant to this Consent Decree. Notwithstanding the above, after completion of two (2) years of Post-Removal Site Control pursuant to the NTCRA and this Consent Decree, the progress reports required pursuant to this Section may be submitted on an annual basis. If requested by EPA or the VTDEC, Performing Settling Defendants shall also provide briefings for EPA and the VTDEC to discuss the progress of the Work.

31. The Performing Settling Defendants shall notify EPA of any change in the schedule described in the monthly, quarterly, or annual progress reports for the performance of any activity, including but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

32. Upon the occurrence of any event during performance of the Work that Performing Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11001 *et seq.*, Performing Settling Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project

Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region I, United States Environmental Protection Agency. The EPA Project Coordinator's and Alternate Project Coordinator's current telephone numbers are (617) 573-5782 and (617) 573-5781, respectively. Within the same 24-hour period, Performing Settling Defendants also shall orally notify the VTDEC Project Manager, or in his or her absence, the emergency response phone number at (800) 641-5005 or, within Vermont, at (802) 244-8721. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

33. Within 20 days of the onset of such an event, Performing Settling Defendants shall furnish to Plaintiffs a written report, signed by the Performing Settling Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Performing Settling Defendants shall submit a report setting forth all actions taken in response thereto.

34. Unless otherwise directed by EPA, after a reasonable opportunity for review and comment by the State, the Performing Settling Defendants shall submit 4 copies of all plans, reports, and data required by the SOW, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Performing Settling Defendants shall simultaneously submit 2 copies of all such plans, reports and data to the State.

35. All reports and other documents submitted by Performing Settling Defendants to EPA (other than the progress reports referred to above) which purport to document Performing Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Performing Settling Defendants.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

36. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall:

a. approve, in whole or in part, the submission;

b. approve the submission upon specified conditions;

c. modify the submission to cure the deficiencies;

d. disapprove, in whole or in part, the submission, directing that the Performing Settling Defendants modify the submission; or

e. any combination of the above.

However, EPA shall not modify a submission without first providing Performing Settling Defendants at least one notice of deficiency and an opportunity to cure within 30 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

37. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 36.a, 36.b, or 36.c, Performing Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 36.c and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

38. a. Upon receipt of a notice of disapproval pursuant to Paragraph 36.d, Performing Settling Defendants shall, within 30 days or such longer time as specified by EPA in such notice, after a reasonable opportunity for review and comment by the State, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX (Stipulated Penalties), shall accrue during the 30-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 39 and 40.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 36.d, Performing Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Performing Settling Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

39. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Performing Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Performing Settling Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XIX (Dispute Resolution).

40. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Performing Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Performing Settling Defendants invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX (Stipulated Penalties).

41. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

42. Deliverables Requiring Performing Settling Defendants' Certification. Each deliverable requiring Performing Settling Defendants' certification as specified in the SOW shall be certified by the Performing Settling Defendants as provided below. Upon submittal to EPA,

the Performing Settling Defendants shall proceed with the next scheduled activity consistent with the deliverable without further notification or approval by EPA. Each such deliverable shall include the following certification signed by the Performing Settling Defendants' Project Coordinator:

> I certify, to the best of my knowledge and professional judgment, and after appropriate inquiries of all relevant persons involved in the preparation of this deliverable, that all guidance documents which relate to this deliverable were reviewed in preparation of this deliverable. I further certify that the contents of this deliverable comply with the requirements of the SOW and all guidance documents which relate to this deliverable. I am aware that EPA may assess stipulated penalties for submission of a deliverable that is not in compliance with the requirements of the SOW, and all guidance documents specified in the SOW which relate to this deliverable. Under penalty of law, I further certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this deliverable, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

43. EPA, at its discretion, may provide comments to the Performing Settling Defendants concerning any deliverable requiring Performing Settling Defendants' certification, and may disapprove the deliverable and notify the Performing Settling Defendants of deficiencies. Before taking any action under this Paragraph, EPA shall provide the State with a reasonable opportunity for review of and comment on such action. Upon receipt of a notice of disapproval with deficiencies, the Performing Settling Defendants shall correct the deficiencies and resubmit the deliverable within fourteen (14) days or such other time period specified by EPA in the notice of disapproval. Notwithstanding a notice of disapproval, the Performing Settling Defendants shall proceed to take any action required by any non-deficient portion of the deliverable. If EPA disapproves the deliverable as resubmitted, the Performing Settling Defendants shall be in violation of the Consent Decree and subject to stipulated penalties pursuant to Section XX (Stipulated Penalties) of this Consent Decree.

XII. PROJECT COORDINATORS

44. Unless already accomplished under the NTCRA Order, within 20 days of lodging this Consent Decree, Performing Settling Defendants, the State, and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Performing Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Performing Settling Defendants' Project Coordinator shall not be an attorney for any of the Performing Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during performance of the Removal Action activities.

45. EPA will deem the Performing Settling Defendants' Project Coordinator's receipt of any notice or communication from EPA relating to this Consent Decree as receipt by the Performing Settling Defendants.

46. Plaintiffs may designate other representatives, including but not limited to, EPA and State employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

47. EPA's Project Coordinator and the Performing Settling Defendants' Project Coordinator will meet, at a minimum, on a monthly basis, or as mutually agreed by the parties. The State's Project Manager shall be provided reasonable advance notice of each meeting and afforded a reasonable opportunity to participate.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

48. Within 30 days of entry of this Consent Decree, Performing Settling Defendants shall establish and maintain financial security in the amount of $6 million in one or more of the following forms:

a. A surety bond guaranteeing performance of the Work;

b. One or more irrevocable letters of credit equalling the total estimated cost of the Work;

c. A trust fund;

d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Performing Settling Defendants; or

e. A demonstration that one or more of the Performing Settling Defendants satisfy the requirements of 40 C.F.R. Part 264.143(f).

49. If the Performing Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 48.d of this Consent Decree, Performing Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Performing Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 48.d or 48.e, they shall submit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) within 30 days of the effective date of this Consent Decree and as may be requested by EPA. The Performing Settling Defendants shall notify EPA of any change to any Performing Settling Defendants' financial condition, if such financial condition formed the basis for the Performing Settling Defendants to meet the financial

test in 40 C.F.R. Part 264.143(f). In the event that EPA, after a reasonable opportunity for review and comment by the State, determines at any time that the financial assurances provided pursuant to this Section are inadequate, Performing Settling Defendants shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 48 of this Consent Decree. Performing Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

50. If Performing Settling Defendants can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 48 above after entry of this Consent Decree, Performing Settling Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Performing Settling Defendants shall submit a proposal for such reduction to EPA and the State, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA, after a reasonable opportunity for review and comment by the State. In the event of a dispute, Performing Settling Defendants may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

51. Performing Settling Defendants may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, after a reasonable opportunity for review and comment by the State, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Performing Settling Defendants may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XIV. CERTIFICATION OF COMPLETION

52. Completion of the Removal Action

a. No later than 18 months from the effective date of the Consent Decree, the Performing Settling Defendants shall schedule and conduct a substantial completion inspection, to be attended by the Performing Settling Defendants, EPA, and the State. Within one-hundred and twenty (120) days of the Substantial Completion Inspection, the Performing Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Completion of Removal Action Report summarizing the activities conducted pursuant to the Statement of Work. Post-Removal Site Control activities shall not be considered part of the Substantial Completion Inspection or the Completion of Removal Action Report. The Completion of Removal Action Report shall include the categories of information, and shall conform to the requirements, specified in Section 300.165 of the NCP entitled "OSC Reports" and Section VI.A.5. of the Statement of Work. The Completion of Removal Action Report also shall include the following certification signed by a person who supervised or directed the preparation of that report:

> Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after completion of the Substantial Completion Inspection and receipt and review of the Completion of Removal Action Report, EPA, after reasonable opportunity to review and comment by the State, determines that the Removal Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Performing Settling Defendants in writing of the activities that must be undertaken by Performing Settling Defendants pursuant to this Consent Decree to complete the Removal Action and achieve the Performance Standards. However, EPA may only require Performing Settling Defendants to perform activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the response action selected in the Action Memorandum," as that term is defined in Paragraph 14.b. EPA, after a reasonable opportunity for review and comment by the State, will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Performing Settling Defendants to submit a schedule to EPA and the State for approval by EPA, after a reasonable opportunity for review and comment by the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions). Performing Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the Substantial Completion Inspection and receipt and review of the initial or any subsequent report requesting Certification of Completion of Removal Action, after a reasonable opportunity for review and comment by the State, that the Removal Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Performing Settling Defendants. This certification shall constitute the Certification of Completion of the Removal Action for purposes of this Consent Decree, including but not limited to Section XXI (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Removal Action shall not affect Performing Settling Defendants' obligations under this Consent Decree.

53. Completion of the Work

a. Within 90 days after Performing Settling Defendants conclude that all phases of the Work (including Post Removal Site Control), have been fully performed, Performing Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Performing Settling Defendants, EPA and the State. If, after the pre-certification inspection, the Performing Settling Defendants still believe that the Work has been fully performed, Performing Settling Defendants shall submit to EPA and the State a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Performing Settling Defendant or the Performing Settling Defendants' Project Coordinator:

> To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after the pre-certification inspection and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has

not been completed in accordance with this Consent Decree, EPA will notify Performing Settling Defendants in writing of the activities that must be undertaken by Performing Settling Defendants pursuant to this Consent Decree to complete the Work. Provided, however, that EPA may only require Performing Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the response action selected in the Action Memorandum," as that term is defined in Paragraph 14.b. EPA, after a reasonable opportunity for review and comment by the State, will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Performing Settling Defendants to submit a schedule to EPA and the State for approval by EPA, after a reasonable opportunity for review and comment by the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions). Performing Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the pre-certification inspection and the initial or any subsequent request for Certification of Completion by Performing Settling Defendants and after a reasonable opportunity for review and comment by the State, that the Work has been performed in accordance with this Consent Decree, EPA will so notify the Performing Settling Defendants in writing.

XV. EMERGENCY RESPONSE

54. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Performing Settling Defendants shall, subject to Paragraph 55, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. The EPA Project Coordinator's and Alternate Project Coordinator's current telephone numbers are (617) 573-5782 and (617) 573-5781, respectively. If neither of these persons is available, the Performing Settling Defendants shall notify the EPA Emergency Response Unit Region 1, telephone number (617) 223-7265. In addition, the Performing Settling Defendants shall also notify the VTDEC Emergency Response Program at telephone number 1-800-641-5005 or, within Vermont, at (802) 244-8721. Performing Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Performing Settling Defendants fail to take appropriate response action as required by this Section, and EPA or, as appropriate, the State take such action instead, Performing Settling Defendants shall reimburse EPA or the State all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Reimbursement of Response Costs). Any and all costs incurred by the EPA and/or the State relative to response actions taken by EPA or, as appropriate, the State in exercising authority under this paragraph shall be reimbursed by Performing Settling Defendants pursuant to the procedures for payment in Section XVI and shall not be subject to the $750,000 Oversight Cost cap in Section XVI.

55. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States or the State: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or

threatened release of Waste Material on, at, or from the Site, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants Not to Sue by Plaintiffs).

XVI. REIMBURSEMENT OF RESPONSE COSTS AND PAYMENTS FOR NATURAL RESOURCE DAMAGES

56. Performing Settling Defendants shall reimburse the EPA Hazardous Substance Superfund for all Oversight Costs in excess of $750,000 and all Future Response Costs not inconsistent with the National Contingency Plan. The United States will send Performing Settling Defendants a bill requiring payment that includes a Region I Oversight Cost Summary or Future Response Cost Summary on a periodic basis. The United States will also send the Performing Settling Defendants a periodic Region I Oversight Cost Summary (which will not be a bill) as documentation of the costs incurred by the United States and the State up to $750,000. Each such standard Oversight Cost Summary shall include a narrative outlining the activities that were performed during the time period covered therein. Performing Settling Defendants shall make all payments within 30 days of Performing Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 57. The Performing Settling Defendants shall make all payments required by this Paragraph in the form of a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund" and referencing the EPA Region and Site/Spill Identification #01C2, the DOJ case number 90-11-3-868A, and the name and address of the party making payment. The Performing Settling Defendants shall send the check(s) to EPA Region I, Attn: Superfund Accounting, P.O. Box 360197M, Pittsburgh, PA 15251 and shall send copies of the check(s) to the United States and EPA as specified in Section XXVII (Notices and Submissions).

57. Performing Settling Defendants may contest payment of any Future Response or Oversight Costs under Paragraph 56 if they determine that the United States or the State has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) or the State (if the State's accounting is being disputed) pursuant to Section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response or Oversight Costs and the basis for objection. In the event of an objection, the Performing Settling Defendants shall, within the 30 day period, pay all uncontested Future Response or Oversight Costs to the United States or the State in the manner described in Paragraph 56. Simultaneously, the Performing Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Vermont and remit to that escrow account funds equivalent to the amount of the contested Future Response or Oversight Costs. The Performing Settling Defendants shall send to the United States, as provided in Section XXVI (Notices and Submissions), and the State a copy of the transmittal letter and check paying the uncontested Future Response or Oversight Costs, and a copy of the correspondence that establishes and funds the escrow account, including but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Performing Settling Defendants shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States or the State prevails in the dispute, within 5 days of the resolution of the dispute, the Performing Settling Defendants shall pay the sums due (with

accrued interest) to the United States or the State, if State costs are disputed, in the manner described in Paragraph 56. If the Performing Settling Defendants prevail concerning any aspect of the contested costs, the Performing Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States or the State, if State costs are disputed in the manner described in Paragraph 74; Performing Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Performing Settling Defendants' obligation to reimburse the United States and the State for their Future Response or Oversight Costs.

58. In the event that the payments required by Paragraph 56 are not made within 30 days of the Performing Settling Defendants' receipt of the bill, Performing Settling Defendants shall pay Interest on the unpaid balance. The Interest on Future Response or Oversight Costs shall begin to accrue on the date EPA mails the bill. The Interest shall accrue through the date of the Performing Settling Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Performing Settling Defendants' failure to make timely payments under this Section. The Performing Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 56.

59. Payments for Natural Resource Damages.

a. In addition to performing the NRD Restoration, Performing Settling Defendants shall, within 30 days after receipt of written notice of entry of this Consent Decree, pay to the United States $16,600 for past assessment costs and NRD Restoration oversight as Natural Resource Damages. The payment shall be made in the form of a certified check made payable to "U.S. Department of the Interior" and referencing Account Number 14X5198, DOJ Number 90-11-3-868A, the USAO number, and the name of the Site. The Performing Settling Defendants shall forward the certified check by certified mail, return receipt requested to:

Chief, Division of Finance
U.S. Fish and Wildlife Service
4401 North Fairfax Drive
Arlington, VA 22203

and shall reference that the payment is for Natural Resource Damages for resources under the trusteeship of DOI with respect to the Bennington Site. Copies of the check paid pursuant to this subparagraph and any accompanying transmittal letter shall be sent to the United States and DOI as provided in Section XXVII (Notices and Submissions).

XVII. INDEMNIFICATION AND INSURANCE

60. a. The United States and the State do not assume any liability by entering into this agreement or by virtue of any designation of Performing Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Performing Settling Defendants shall indemnify, save and hold harmless the United States, the State, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Performing Settling Defendants, their officers, directors, employees, agents, contractors,

subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including but not limited to, any claims arising from any designation of Performing Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Performing Settling Defendants agree to pay the United States and the State all costs they incur including but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of Performing Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Performing Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Performing Settling Defendants nor any such contractor shall be considered an agent of the United States or the State.

b. The United States and the State shall give Performing Settling Defendants notice of any claim for which the United States or the State plans to seek indemnification pursuant to Paragraph 60.a, and shall consult with Performing Settling Defendants prior to settling such claim.

61. Performing Settling Defendants waive all claims against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between any one or more of Performing Settling Defendants and any person for performance of Work on or relating to the Site, including but not limited to, claims on account of construction delays. In addition, Performing Settling Defendants shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Performing Settling Defendants and any person for performance of Work on or relating to the Site, including but not limited to, claims on account of construction delays.

62. No later than 15 days before commencing any on-site Work, Performing Settling Defendants shall secure, and shall maintain until the first anniversary of EPA's approval of the Completion of Removal Action Report pursuant to Paragraph 52.b of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of three (3) million dollars, combined single limit, and automobile liability insurance with limits of one (1) million dollars, combined single limit, naming the United States and the State as additional insureds. In addition, for the duration of this Consent Decree, Performing Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Performing Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Performing Settling Defendants shall provide to EPA and the State certificates of such insurance and a copy of each insurance policy. Performing Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Performing Settling Defendants demonstrate by evidence satisfactory to EPA and the State that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Performing Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

63. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Performing Settling Defendants, of any entity controlled by Performing Settling Defendants, or of Performing Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Performing Settling Defendants' best efforts to fulfill the obligation. The requirement that the Performing Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

64. If any event occurs or has occurred that has delayed or may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Performing Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Office of Site Remediation and Restoration, EPA Region I, within three working days of when Performing Settling Defendants first knew that the event might cause a delay. Within five (5) working days thereafter, Performing Settling Defendants shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Performing Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Performing Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Performing Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Performing Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Performing Settling Defendants shall be deemed to know of any circumstance of which Performing Settling Defendants, any entity controlled by Performing Settling Defendants, or Performing Settling Defendants' contractors knew or should have known.

65. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by the State, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Performing Settling Defendants in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay is attributable to a force majeure event, EPA will notify the Performing Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

66. If the Performing Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Performing Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Performing Settling Defendants complied with the requirements of Paragraphs 64 and 65, above. If Performing Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Performing Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

67. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between EPA and Settling Defendants or between the State and Settling Defendants arising under or with respect to this Consent Decree. The procedures for resolution of disputes which involve EPA are governed by Paragraphs 67 to 72. The State may participate in such dispute resolution proceedings to the extent specified in Paragraphs 67 through 72. Disputes between the State and Settling Defendants are governed by Paragraph 74. However, the procedures set forth in this Section shall not apply to actions by the United States or the State to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

68. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

69. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA, after reasonable opportunity for review and comment by the State, shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States and the State a written Statement of Position on the matter in dispute, including but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 70 or Paragraph 71.

b. Within fourteen (14) days after receipt of Settling Defendants' Statement of Position, EPA, after reasonable opportunity for review and comment by the State, will serve on Settling Defendants its Statement of Position, including but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. The State may also serve a Statement of Position within the fourteen-day time limit set forth above in this Paragraph. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 70 or 71.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 70 or 71, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 70 and 71.

70. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the Action Memorandum's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the Settling Defendants, EPA or the State.

b. The Director of the Office of Site Remediation and Restoration, EPA Region I, will issue, after reasonable opportunity for review and comment by the State, a final administrative decision resolving the dispute based on the administrative record described in Paragraph 70.a of this Section. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 70.c and 70.d.

c. Any administrative decision made by EPA pursuant to Paragraph 70.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may, within 30 days, file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Director of the Office of Site Remediation and Restoration is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 70.a.

71. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 69, the Director of the Office of Site Remediation and Restoration, EPA Region I, after reasonable opportunity for review and comment by the State, will issue a final decision resolving the dispute. The Office of Site Remediation and Restoration Director's

decision shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may, within 30 days, file a response to Settling Defendants' motion.

b. Notwithstanding Paragraph M of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

72. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA, after reasonable opportunity for review and comment by the State, or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 83. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Performing Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

73. Disputes solely between DOI and Performing Settling Defendants. Disputes arising under the Consent Decree between DOI and Performing Settling Defendants that relate to the assessment of stipulated penalties by DOI or the implementation of the NRD Restoration shall be governed in the following manner. The procedures for resolving the disputes mentioned in this Paragraph shall be the same as provided for in Paragraphs 67 through 72, except that each reference to EPA shall read as a reference to DOI, each reference to the Director of the Office of Site Remediation and Restoration, EPA Region I, shall be read as a reference to the Regional Director for Region 5 of the U.S. Fish & Wildlife Service, and any reference to "response action" shall be read as a reference to the NRD Restoration.

74. Disputes solely between the State and Performing Settling Defendants. Disputes arising under the Consent Decree between the State and Performing Settling Defendants that relate to Future Response Costs or Oversight Costs owed to the State or assessment of stipulated penalties by the State shall be governed in the following manner. The procedures for resolving the disputes mentioned in this Paragraph shall be the same as provided for in Paragraphs 67 - 72, except that each reference to EPA shall read as a reference to the VTDEC, each reference to the Director of the Office of Site Remediation and Restoration, EPA Region I, shall be read as a reference to the Commissioner of the VTDEC, and each reference to the United States shall be read as a reference to the State.

XX. STIPULATED PENALTIES

75. Performing Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 76 and 77 to the United States and the State for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). *De Minimis* Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraph 76 to the United States for failure to comply with the requirements pertaining to *De Minimis* Defendants (including but not limited to payment

provisions) of this Consent Decree. The United States shall receive 90% of the stipulated penalties received and the State shall receive 10% of the stipulated penalties received. "Compliance" by Performing Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

76. The following stipulated penalties shall be payable per violation per day to the United States for any noncompliance, except as addressed below in Paragraph 77, including but not limited to failure to provide access or institutional controls, failure to reimburse response costs, failure to comply with the schedule set forth in the SOW, and failure to submit timely or adequate deliverables including but not limited to, the Conceptual Design Letter Report, Intermediate Design Letter Report, 100% NTCRA Design, NTCRA Implementation Schedule, Demonstration of Compliance Plan, Health and Safety Plan, Post Removal Site Control Plan, Interim Completion of Removal Action Report, and Final Completion of Removal Action Report:

Penalty Per Violation Per Day	Period of Noncompliance
$1,500	1st through 14th day
$3,000	15th through 30th day
$5,000	31st day and beyond

77. The following stipulated penalties shall be payable per violation per day to the United States for failure to submit timely or adequate progress reports or financial assurance documentation pursuant to the SOW and this Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
$750	1st through 14th day
$1,500	15th day and beyond

78. In the event that EPA or the State assumes performance of a portion or all of the Work pursuant to Paragraph 95 of Section XXI (Covenants Not to Sue by Plaintiffs), Performing Settling Defendants shall be liable for the following stipulated penalties:

$700,000 If work performance is assumed before EPA approval of the 100% NTCRA Design covering the groundwater isolation system, sediment consolidation, leachate collection system, landfill cap, surface drainage system, and gas management system;

$550,000 If work performance is assumed on or after the date EPA approves the 100% NTCRA Design and before the date EPA approves the Completion of Removal Action Report;

$250,000	If work performance is assumed on or after the date EPA approves the Completion of Removal Action Report and before the date one year after initiation of Post-Removal Site Control; or
$150,000	If work performance is assumed on or after the date one year after the initiation of Post-Removal Site Control.

Notwithstanding the foregoing provisions of this paragraph, if EPA determines that additional work is required pursuant to Paragraph 14 (Modification of the SOW or Related Work Plans) or Paragraph 20 (Performing Settling Defendants' Obligation To Perform Further Response Actions) and EPA or the State assumes performance of a portion or all of such Work pursuant to Paragraph 95 of Section XXI (Covenants Not to Sue by Plaintiffs), Performing Settling Defendants shall be liable for a stipulated penalty in the amount of $550,000.

79. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Performing Settling Defendants of any deficiency; (2) with respect to a decision by the Director of the Office of Site Remediation and Restoration, EPA Region I, under Paragraph 70.b or 71.a of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Performing Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

80. Following EPA's determination, after a reasonable opportunity for review and comment by the State, that Performing Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Performing Settling Defendants written notification of the same and describe the noncompliance. EPA and the State may send the Performing Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA, or the State for the obligations specified below in Paragraph 85 of this Section, has notified the Performing Settling Defendants of a violation, except that any daily penalties shall not accrue after the thirtieth day of noncompliance until EPA has provided Performing Settling Defendants with notice of noncompliance pursuant to this Paragraph. Any EPA failure to notify Performing Settling Defendants of any noncompliance under this Consent Decree shall only affect the daily accrual of stipulated penalties with respect to the particular noncompliance for which notice has not been provided but not the accrual of penalties with respect to any other noncompliance.

81. All penalties accruing under this Section shall be due and payable to the United States and the State within 30 days of the Performing Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Performing Settling Defendants invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to EPA Region 1, Attn: Superfund

Accounting, P.O. Box 360197M, Pittsburgh, PA 15251, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill Identification #01C2, the DOJ Case Number 90-11-3-868A, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States and EPA as provided in Section XXVII (Notices and Submissions). All payments to the State under this Section shall be paid by certified or cashier's check(s) made payable to "State of Vermont," shall be mailed to the Office of the Attorney General, 109 State Street, Montpelier, VT 05609-1001, and shall indicate that the payment is for stipulated penalties.

82. The payment of penalties shall not alter in any way Performing Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree.

83. Penalties shall continue to accrue as provided in Paragraph 72 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Performing Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Performing Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Performing Settling Defendants to the extent that they prevail.

84. DOI Assessment of Stipulated Penalties.

a. Assessment of stipulated penalties on behalf of DOI shall be governed in the following manner. Following DOI's determination that Performing Settling Defendants have failed to make the payment required by Subparagraph 59.a, failed to meet a deadline for completion of a task related to the NRD Restoration, or have failed to timely submit deliverables, if any, to DOI, DOI may give Performing Settling Defendants written notification of the same and describe the noncompliance. The provisions for liability, assessment and payment of the stipulated penalties referenced in this Paragraph shall be the same as provided in Paragraphs 79 through 83, except that each reference to EPA shall read as a reference to DOI, each reference to the SOW shall be read as a reference to the NRD SOW, each reference to the "Director of the Office of Site Remediation and Restoration, EPA Region I" shall be read as a reference to Regional Director for Region 5 of the U.S. Fish & Wildlife Service, each reference to the Work shall be read as a reference to the NRD Restoration, and each reference to the State's reasonable opportunity to review and comment shall be deleted.

b. The following stipulated penalties shall accrue per violation per day for failure to meet any of the deadlines set forth in the NRD SOW:

Penalty Per Violation Per Day	Period of Noncompliance
$500	1st through 7th day
$1,000	8th through 30th day
$2,500	31st day and beyond

c. A stipulated penalty of $500 per day shall accrue for failure to meet the payment obligation provided under Paragraph 59.a.

d. A stipulated penalty of $400 per day shall accrue for each failure to meet a requirement of the NRD SOW not covered by Subparagraph 84.b.

e. All payments to the United States under this Paragraph shall be made in the form of a certified check made payable to "Treasurer of the United States", referencing DOJ Number 90-11-3-868A, the USAO number, and the name of the Site. The certified check, and an accompanying transmittal letter referencing the DOJ and USAO numbers, the name of the Site, and that the payment is for stipulated penalties in connection with the NRD Restoration and/or payment, shall be sent by certified mail, return receipt requested to DOI as provided in Section XXVII (Notices and Submissions). Copies of the check and the accompanying transmittal letter shall be sent to the United States and the State as provided in Section XXVII.

85. State Assessment of Stipulated Penalties. Assessment of stipulated penalties by the State shall be governed in the following manner. Following the State's determination that Performing Settling Defendants have failed to pay Future Response Costs or Oversight Costs owed to the State as required by Section XVIII (Reimbursement of Response Costs) or have failed to timely submit deliverables to the State, the State may give Performing Settling Defendants written notification of the same and describe the noncompliance. The provisions for liability, assessment and payment of the stipulated penalties referenced in this Paragraph shall be the same as provided in Paragraphs 75 through 83 of this Section, except that each reference to EPA shall read as a reference to the VTDEC, each reference to the United States shall be read as a reference to the State, each reference to the State shall be read as a reference to the United States, and each reference to the State's reasonable opportunity to review and comment shall be deleted.

86. a. If Performing Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Performing Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 81.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Performing Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including but not limited to, penalties pursuant to Section 122(l) of CERCLA. However, the United States shall not seek civil penalties pursuant to Section

122(l) of CERCLA for any violation for which a stipulated penalty is paid hereunder, except in the case of a willful violation of the Consent Decree.

87. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXI. PLAINTIFFS' COVENANTS NOT TO SUE AS TO PERFORMING SETTLING DEFENDANTS

88. In consideration of the actions that will be performed and the payments that will be made by the Performing Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 89, 90, and 94 of this Section, the United States on behalf of EPA, DOI and NOAA covenants not to sue or to take administrative action against Performing Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. In consideration of the actions that will be performed and the payments that will be made by the Performing Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 89, 90, and 94 of this Section, the State covenants not to sue or to take administrative action against Performing Settling Defendants pursuant to Section 107(a) of CERCLA and 10 Vt.Stat.Ann. Ch. 159, § 6615 and 10 Vt.Stat.Ann. Chapter 201 relating to the Site. Except with respect to future liability, these covenants not to sue by the United States and the State shall take effect upon the effective date of this Consent Decree. With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Removal Action by EPA pursuant to Paragraph 52.b of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Performing Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Performing Settling Defendants and do not extend to any other person.

89. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Performing Settling Defendants (a) to perform further response actions relating to the Site or (b) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Removal Action:

i. conditions at the Site, previously unknown to EPA, are discovered, or

ii. information, previously unknown to EPA, is received, in whole or in part,

and EPA determines, based on these previously unknown conditions or information together with any other relevant information, that the Removal Action is not protective of human health or the environment.

90. United States' Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Performing Settling Defendants (a) to perform further

response actions relating to the Site or (b) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Removal Action:

i. conditions at the Site, previously unknown to EPA, are discovered, or

ii. information, previously unknown to EPA, is received, in whole or in part,

and EPA determines, based on these previously unknown conditions or this information together with other relevant information, that the Removal Action is not protective of human health or the environment.

91. State's Pre-Certification Reservations. Notwithstanding any other provisions of this Consent Decree, the State on behalf of the VTDEC, reserves, and this Consent Decree is without prejudice to, any right jointly with, or separately from, the United States to institute proceedings in this action or in a new action under Section 107 of CERCLA, 42 U.S.C. § 9607, or under any applicable State law, including but not limited to 10 Vt.Stat.Ann., Ch. 159, § 6615, seeking to compel all or any of the Performing Settling Defendants (a) to perform other response actions at the Site, or (b) to reimburse the State for additional response costs for response actions at the Site, to the extent that EPA has determined that such actions required under (a) and (b) above in this Paragraph will not significantly delay or be inconsistent with the Removal Action, if, prior to Certification of Completion of the Removal Action:

i. conditions at the Site, previously unknown to the State, are discovered or become known to the State, or

ii. information previously unknown to the State is received by the State, in whole or in part,

and the State Agency Commissioner, or his or her delegate determines, pursuant to 10 Vt.Stat.Ann. Ch. 201 or Ch. 211, 18 Vt.Stat.Ann. Ch. 28 or 21 Vt.Stat.Ann. Ch. 23, based on these previously unknown conditions or this information together with any other relevant information that the response actions taken are not protective of public health, safety, welfare or the environment. The United States reserves all rights it may have under applicable law, to oppose any determinations made or any actions taken, ordered or proposed by the State pursuant to this Paragraph.

92. State's Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the State, on behalf of the VTDEC, reserves, and this Consent Decree is without prejudice to, the right jointly with, or separately from, the United States to institute proceedings in this action or in a new action under Section 107 of CERCLA, 42 U.S.C. § 9607, or under any applicable State law, including but not limited to 10 Vt.Stat.Ann. Ch. 159, § 6615, seeking to compel all or any of the Performing Settling Defendants (a) to perform other response actions at the Site, or (b) to reimburse the State for additional response costs for response actions at the Site, to the extent that EPA has determined that such actions required under (a) and (b) above in this Paragraph will not significantly delay or be inconsistent with the Removal Action, if, subsequent to Certification of Completion of Removal Action:

i. conditions at the Site, previously unknown to the State, are discovered or become known by the State after the Certification of Completion, or

ii. information previously unknown to the State is received by the State, in whole or in part, after the Certification of Completion,

and the VTDEC Commissioner, or his or her delegate, determines, pursuant to 10 Vt.Stat.Ann. Ch. 201 or Ch. 211, 18 Vt.Stat.Ann. Ch. 28 or 21 Vt.Stat.Ann. Ch. 23, based on these previously unknown conditions or this information together with any other relevant information, that the response actions taken are not protective of public health, safety, welfare or the environment. The United States reserves all rights it may have under applicable law, to oppose any determinations made or any actions taken, ordered or proposed by the State pursuant to this Paragraph.

93. For purposes of Paragraphs 89 and 91, the information and the conditions known to EPA, under Paragraph 89, and/or information and the conditions known to the State, under paragraph 91, shall include only that information and those conditions known to EPA and/or the State, as applicable, as of the date the Action Memorandum was signed, as set forth in the Action Memorandum for the Site and the administrative record supporting the Action Memorandum, and that information and those conditions known to EPA and/or the State as set forth in the Long-Term Monitoring Plan Sampling Report (Spring 1996). For purposes of Paragraphs 90 and 92, the information and conditions known to EPA, under paragraph 90, and/or the conditions known to the State, under paragraph 92, shall include only that information and those conditions known to EPA and/or the State, as applicable, as of the date of Certification of Completion of the Removal Action and set forth in the Action Memorandum, the administrative record supporting the Action Memorandum, the Long-Term Monitoring Plan Sampling Report (Spring 1996), the post-Action Memorandum administrative record, or in any information received by EPA (or the State for the purposes of Paragraph 92) pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Removal Action.

94. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 88. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Performing Settling Defendants with respect to all other matters, including but not limited to, the following:

a. claims based on a failure by Performing Settling Defendants to meet a requirement of this Consent Decree;

b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

c. liability for future disposal of Waste Material at the Site, other than as provided in the Action Memorandum, the Work, or otherwise ordered by EPA;

d. criminal liability;

e. liability for violations of federal or state law;

f. liability, prior to Certification of Completion of the Removal Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 14 (Modification of the SOW or Related Work Plans);

g. previously incurred costs of response related to the RI/FS Order;

h. liability for any future response action relating to the Active Remediation of the groundwater at the Site including monitoring to the extent it is not included in Monitoring required pursuant to Section VIII of the SOW;

i. implementation of additional Institutional Controls and/or access as determined by EPA and as part of any response action at the Site; and

j. claims seeking, or liability for, the securing and implementation of Supplemental Institutional Controls, and liability for any response costs incurred relating to the implementation or securing of Supplemental Institutional Controls.

95. Work Takeover. In the event EPA determines, after a reasonable opportunity for review and comment by the State, that Performing Settling Defendants have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA or the State may assume the performance of all or any portions of the Work as EPA determines necessary, after a reasonable opportunity for review and comment by the State. Performing Settling Defendants may invoke the procedures set forth in Paragraph 70 of Section XIX (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States or the State in performing the Work pursuant to this Paragraph shall be paid by Performing Settling Defendants pursuant to Section XVI (Reimbursement of Response Costs). Any and all costs incurred by the EPA and/or the State in performing the Work pursuant to this paragraph shall be reimbursed by Performing Settling Defendants pursuant to the procedures for payment in Section XVI and shall not be subject to the $750,000 Oversight Cost cap in Section XVI.

96. Reservations Concerning Natural Resource Damages. Notwithstanding any other provision of this Consent Decree, the United States, on behalf of DOI and NOAA, and the State, on behalf of the Agency for Natural Resources, reserve the right to institute proceedings against Performing Settling Defendants in this action or in a new action seeking recovery of Natural Resource Damages, based on (a) conditions with respect to the Site, unknown to DOI, NOAA and the State Agency for Natural Resources, as appropriate, at the date of lodging of this Consent Decree, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of natural resources, or (b) information received after the date of lodging of this Consent Decree which indicates that there is injury to, destruction of, or loss of natural resources of a type that was unknown, or of a magnitude greater than was known, to the United States or the State, as appropriate, at the date of lodging of this Consent Decree.

97. Except with respect to Monitoring, the United States and the State retain all authority and reserve all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY SETTLING DEFENDANTS

98. Covenant Not to Sue. Subject to the reservations in Paragraph 99, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or the State, including any department, agency or instrumentality of the United States or the State, with respect to the Site, Past Response Costs, Oversight Costs, Future Response Costs, or response actions as defined herein or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

b. any claims under CERCLA Sections 107 or 113 related to the Site;

c. any claim under the United States Constitution, the Vermont Constitution, the Tucker Act, 28 U.S.C. § 1491, or at common law, or arising out of or relating to past or future access to, imposition of covenants, conditions and restrictions on, or other restrictions on the use or enjoyment of property owned or controlled by the Settling Defendants affected by the covenants, conditions, and restrictions and access rights herein;

d. any claims arising out of response activities at the Site, including claims based on EPA's and the State's selection of response actions, oversight of response activities or approval of plans for such activities; or

e. any claims for costs, fees, or expenses incurred in this action or related to the Site, including claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended.

99. The Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

100. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

101. Except as provided in Subparagraph 113.b, Settling Defendants agree to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against the following persons:

a. any person (i) whose liability to Settling Defendants with respect to the Site is based solely on CERCLA § 107(a)(3) or (4), (ii) who arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, of only Municipal Solid Waste or Sewage Sludge owned by such person, and (iii) who is a Small Business, a Small Non-profit Organization, or the Owner, Operator, or Lessee of Residential Property;

b. any person (i) whose liability to Settling Defendants with respect to the Site is based solely on CERCLA § 107(a)(3) or (4), and (ii) who arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, of 55 gallons or less of liquid materials containing hazardous substances, or 100 pounds or less of solid materials containing hazardous substances, except where EPA has determined that such material contributed or could contribute significantly to the costs of response at the Site; and

c. with respect to claims for contribution only, any other Settling Defendant(s).

XXIII. SETTLEMENT WITH DE MINIMIS DEFENDANTS

102. The Regional Administrator of EPA, Region I, or his delegatee, has determined the following:

a. prompt settlement with each *De Minimis* Defendant is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1);

b. the payment to be made by each *De Minimis* Defendant under this Consent Decree involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1), based upon EPA's estimate that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund and by private parties is between $10 million and $15 million; and

c. the amount of hazardous substances contributed to the Site by each *De Minimis* Defendant and the toxic or other hazardous effects of the hazardous substance contributed to the Site by each *De Minimis* Defendant are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A). This is because the amount of hazardous substances contributed to the Site by each *De Minimis* Defendant does not exceed 1.05% of the hazardous substances at the Site and the hazardous substances contributed by each *De Minimis* Defendant to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

103. Certification By signing this Consent Decree, each *De Minimis* Defendant certifies, individually, that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

The Settling Defendants participated in an allocation process regarding the Site. Certain documents prepared by the Settling Defendants in connection with the allocation process which are privileged have not been disclosed to EPA.

104. Should any *De Minimis* Defendant discover or come to possess after the date of its signature to this Consent Decree, any information, not previously provided to the EPA, the State, or to any Performing Settling Defendant which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site, the *De Minimis* Defendant shall immediately notify EPA, the State and the Performing Settling Defendants of the new information. *De Minimis* Defendants shall not be held liable for stipulated penalties for failure to comply with this paragraph.

105. Notwithstanding any other provision in this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings against any individual *De Minimis* Defendant in this action or in a new action or to issue an administrative order to any individual *De Minimis* Defendant seeking to compel that *De Minimis* Defendant to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response, if information is discovered which indicates that such *De Minimis* Defendant contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such *De Minimis* Defendant no longer qualifies as a *de minimis* party at the Site because such party contributed greater than 1.05% of the hazardous substances at the Site, or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site.

106. Payments by *De Minimis* Defendants.

a. Within 30 days of receipt of written notice of the entry of this Consent Decree, each *De Minimis* Defendant shall pay to the Performing Parties the amounts set forth in Appendix G.

b. Each *De Minimis* Defendant's payment to the Performing Settling Defendants includes an amount for all past and future response costs incurred or expected to be incurred at the Site by Plaintiffs or any private party, an amount for all natural resource damages assessment and restoration costs and a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the Plaintiffs or by any private party, will exceed the estimated total response costs upon which *De Minimis* Defendants' payments are based.

c. Each payment to the Performing Settling Defendants shall be made by certified or cashier's check made payable to "Bennington Landfill Site Group" and delivered to

common counsel for the Performing Settling Defendants, David P. Rosenblatt, Esquire, Burns & Levinson LLP, 125 Summer Street, Boston, MA 02110. A copy of the transmittal letter and the check simultaneously shall be sent to EPA, and DOJ, and the State in accordance with Paragraph 122. The payments shall be turned over to the custody of the Performing Settling Defendants who shall use the funds to finance the Work. The funds shall not be used to pay stipulated penalties or attorney fees.

107. Plaintiffs' Covenants Not to Sue As to *De Minimis* Defendants.

a. In consideration of the payments that will be made by *De Minimis* Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraph 108, the United States covenants not to sue or take administrative action against any of the *De Minimis* Defendants pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, relating to the Site.

b. In consideration of the payments that will be made by *De Minimis* Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraph 108, and except with respect to the State Settling Defendant, the State covenants not to sue or take administrative action against any of the *De Minimis* Defendants pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, or 10 Vt.Stat.Ann. Ch. 159, § 6615 relating to the Site.

c. With respect to present and future liability, the covenants not to sue set forth in Subparagraphs 107.a and 107.b shall take effect for each *De Minimis* Defendant upon receipt of that *De Minimis* Defendant's payments as required by Paragraph 106 of this Consent Decree. With respect to each *De Minimis* Defendant, individually, this covenant not to sue is conditioned upon: (a) the satisfactory performance by the *De Minimis* Defendant of all obligations under this Consent Decree; and (b) the veracity of the information provided to EPA by the *De Minimis* Defendant relating to the *De Minimis* Defendant's involvement with the Site. The covenant not to sue under this Paragraph extends only to the *De Minimis* Defendants and does not extend to any other person.

108. Plaintiffs' Reservations of Rights as to *De Minimis* Defendants. The covenant not to sue by the United States set forth in Paragraph 107 does not pertain to any matters other than those expressly specified in Paragraph 107. The United States reserves, and this Consent Decree is without prejudice to, all rights against *De Minimis* Defendants with respect to all other matters including but not limited to, the following:

a. claims based on a failure by *De Minimis* Defendants to meet a requirement of this Consent Decree;

b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

c. liability for future disposal of Waste Material at the Site, other than as provided in the Action Memorandum, the Work, or otherwise ordered by EPA;

d. criminal liability; and

e. liability for violations of federal or state law.

109. *De Minimis* Defendants covenant not to sue and agree not to assert any claims or causes of action against any Settling Defendant with regard to the Site pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613.

110. Contribution Protection as to *De Minimis* Defendants

a. Performing Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against any *De Minimis* Defendant with regard to the Site pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, except as provided in Paragraphs 104 and 105.

b. The Parties agree, and by entering this Consent Decree this Court finds, that each *De Minimis* Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 122(g)(5) of CERCLA, 42 U.S.C. § 9622(g)(5), for "*De Minimis* Matters Addressed" in this Consent Decree. The "*De Minimis* Matters Addressed" in this Consent Decree are (a) all response actions taken and to be taken by the Plaintiffs and by private parties; (b) all Response Costs incurred and to be incurred by the Plaintiffs and by private parties in connection with the Site; and (c) all natural resource damages assessment and restoration costs.

XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

111. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

112. The Parties agree, and by entering this Consent Decree this Court finds, that the Performing Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree. "Matters addressed" shall be the Removal Action, Post-Removal Site Control, Monitoring, Past Response Costs, Oversight Costs, and Future Response Costs.

113. Settling Defendants' Suits or Claims for Contribution.

a. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States and the State in writing no later than 65 days prior to the initiation of such suit or claim. Such notification shall include a description of the reasons, including references to available evidence, that each person to be named in the suit or claim does not fall within the class of persons, identified in Paragraph 101, against whom the Settling Defendants have waived their claims or causes of action for contribution. EPA may, within 60 days of receipt of such notification, request that Settling Defendants provide supplemental information regarding the notification. EPA may request a 30-day extension to complete its review of Settling Defendants'

notification. If EPA fails to object in writing to Settling Defendants' suit or claim with respect to a person identified in the notification within 60 days of receipt of the notification (or within 90 days if an extension is requested), then Settling Defendants shall not be held liable for stipulated penalties for failure to comply with Paragraph 101 with respect to that person. Notwithstanding the provisions of this paragraph, the United States reserves the right to pursue a judgment from or enter into settlements with any person in connection with the Site, including but not limited to any person who falls within the class of persons, identified in Paragraph 101, against whom the Settling Defendants have waived their claims or causes of action for contribution.

b. The waiver of claims set forth in Paragraph 101 and the notification procedures set forth in Subparagraph 113.a shall not apply to any claims or suits against any party which has previously been sent a notice letter from EPA.

114. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States and the State within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States and the State within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

115. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Performing Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants Not to Sue by Plaintiffs).

XXV. ACCESS TO INFORMATION

116. Settling Defendants shall provide to EPA and the State, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

117. a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the State, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information: and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

118. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXVI. RETENTION OF RECORDS

119. Until 6 years after the Performing Settling Defendants' receipt of EPA's notification of Completion of Removal Action pursuant to Paragraph 52.b of Section XIV (Certification of Completion), each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 6 years after the Performing Settling Defendants' receipt of EPA's notification pursuant to Paragraph 52.b of Section XIV (Certification of Completion), Performing Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

120. At the conclusion of this document retention period, Settling Defendants shall notify the United States and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State, Settling Defendants shall deliver any such records or documents to EPA or the State. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Performing Settling Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Performing Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged. Settling Defendants shall retain all documents, records and information claimed as privileged until the United States has had a reasonable opportunity to dispute the privilege claim(s) and any such dispute has been resolved in favor of Settling Defendants.

121. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State

or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XXVII. NOTICES AND SUBMISSIONS

122. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the State, the VTDEC, the *De Minimis* Defendants, and the Performing Settling Defendants, respectively.

As to the United States: Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ No. 90-11-3-868A

and Director, Office of Site Remediation and Restoration
United States Environmental Protection Agency
Region I (HIO)
J.F.K. Federal Building
Boston, MA 02203

As to EPA: Edward M. Hathaway
Remedial Program Manager
U.S. Environmental Protection Agency
Office of Site Remediation and Restoration (HBT)
J.F.K. Federal Building
Boston, MA 02203

As to DOI: Mark Barash
Office of the Regional Solicitor
U.S. Department of the Interior
One Gateway Center, Suite 612
Newton Corner, MA 02158-2868

As to the State: Stan Corneille, State Site Manager
Waste Management Division
Vermont Department of Environmental Conservation
103 South Main Street
Waterbury, VT 05676

As to the Performing Settling Defendants:

Geoff Seibel
de maximis, Inc.
1125 South Cedar Crest Blvd.
Suite 202, Allentown, PA 18103

and

David P. Rosenblatt, Esquire
Burns & Levinson LLP
125 Summer Street
Boston, MA 02110
Common Counsel to Performing Settling Defendants

As to *De Minimis* Settling Defendants:

Notice to Common Counsel Rosenblatt until three years following the effective date of this Consent Decree after which notice will be made to each *De Minimis* Defendant as identified in the signature page of this Consent Decree.

XXVIII. APPENDICES

123. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the Action Memorandum.

"Appendix B" is the SOW.

"Appendix C" is the NRD SOW.

"Appendix D" is the description and/or map of the Site.

"Appendix E" is the complete list of the *De Minimis* Defendants.

"Appendix F" is the complete list of the Performing Settling Defendants.

"Appendix G" is the list of amounts each *De Minimis* Defendant shall pay to the Performing Settling Defendants under this Consent Decree.

XXIX. COMMUNITY RELATIONS

124. Performing Settling Defendants shall propose to EPA and the State their participation in the community relations plan to be developed by EPA, after a reasonable opportunity for review and comment by the State. EPA will determine the appropriate role for the Performing Settling Defendants under the Plan. Performing Settling Defendants shall also cooperate with EPA and the State in providing information regarding the Work to the public. As requested by EPA or the State, Performing Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA or the State to explain activities at or relating to the Site.

XXX. MODIFICATION

125. Material modifications to the SOW may be made only by written notification to and written approval of the United States, Performing Settling Defendants, and the Court. Prior to

providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

126. Modifications to the schedules specified in the Consent Decree for completion of the Work, or modifications to the SOW that do not materially alter that document may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Performing Settling Defendants. Such non-material modifications will become effective upon filing with the Court.

127. Non-material modifications to the Consent Decree other than those addressed above in Paragraph 126 may be made only by written notification to and written approval of the United States, the State and the Performing Settling Defendants. Such modifications will become effective upon filing with the Court by the United States. Material modifications to the Consent Decree and any modifications to the Performance Standards may be made only by written notification to and written approval of the United States, the State, the Performing Settling Defendants, and the Court, and, if affected by the modification, the *De Minimis* Settling Defendants.

128. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

129. For purposes of this Section, the Consent Decree shall not include the SOW or other attachments to the Consent Decree.

XXXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

130. This Consent Decree shall be subject to a thirty (30) day public comment period consistent with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent to the Consent Decree if comments received disclose facts or considerations which show that the Consent Decree is inappropriate, improper or inadequate within the meaning of Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2). The State may withdraw or withhold its consent to the entry of this Consent Decree if comments received disclose facts or considerations which show that the Consent Decree violates state law. The United States reserves the right to challenge in court the State withdrawal from the Consent Decree, including the right to argue that the requirements of state law have been waived, pre-empted or otherwise rendered inapplicable by federal law. The State reserves the right to oppose the United States' position taken in opposition to the proposed withdrawal. In addition, in the event of the United States' withdrawal from this Consent Decree, the State reserves its right to withdraw from this Consent Decree. Settling Defendants consent to the entry of this Consent Decree without further notice.

131. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXII. EFFECTIVE DATE

132. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXXIII. RETENTION OF JURISDICTION

133. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

XXXIV. SIGNATORIES/SERVICE

134. Each undersigned representative of a Settling Defendant to this Consent Decree, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, and the Attorney General for the State of Vermont certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

135. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

136. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

SO ORDERED THIS 18th DAY OF August, 1997

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR THE UNITED STATES OF AMERICA

6/21/97
Date

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

6/24/97
Date

MARK A. GALLAGHER
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20044-7611
(202) 514-5405

CHARLES R. TETZLAFF
United States Attorney
for the District of Vermont

6/25/97
Date

JOSEPH R. PERELLA
Assistant U.S. Attorney
P.O. Box 570
Burlington, VT 05402-0570
(802) 951-6725

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

6/6/97
Date

JOHN P. DEVILLARS
Regional Administrator, Region I
U.S. Environmental Protection Agency
J.F.K. Federal Building (RAA)
Boston, MA 02203

5-19-97
Date

HUGH W. MARTINEZ
Senior Attorney
U.S. Environmental Protection Agency
Region I
J.F.K. Federal Building (SEL)
Boston, MA 02203

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR THE STATE OF VERMONT
WILLIAM H. SORRELL
ATTORNEY GENERAL

May 22, 1997
Date

by: John W Kessler

JOHN W. KESSLER
Assistant Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609-1001
(802) 828-3171

May 26, 1997
Date

by: Canute E. Dalmasse

CANUTE E. DALMASSE, Commissioner
Vermont Department of Environmental Conservation
103 South Main Street
Waterbury, VT 05676
(802) 241-3800

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR B CO., ON BEHALF OF

ITSELF AND ON BEHALF OF BIJUR LUBRICATING CORP.

4/14/97
Dated

Name RUSSELL HOOPER

Title PRESIDENT

Address 9700 W. PICO BLVD., LOS ANGELES, 90035

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: R. MARSHALL WITTEN, ESQ.

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR Eveready Battery Co., Inc., ON BEHALF OF

ITSELF AND ON BEHALF OF _____

_____

4-22-97
Dated

C J Parietti

Name C. J. Parietti

Title Vice President - Production

Address Eveready Battery Co., Inc.
25225 Detroit Road
Westlake, Ohio 44145

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Lisa A. Funderburg, Esq.
Eveready Battery Co., Inc.
Checkerboard Square
St. Louis, Missouri 63164
Phone: (314) 982-2801
Fax: (314) 982-1603

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR Johnson Controls Battery Group, Inc., ON BEHALF OF

ITSELF AND ON BEHALF OF _____

_____

4/18/97
Dated

Name Arthur F. Nennig, Jr.

Title Controller

Address Johnson Controls, Inc.
5757 North Green Bay Avenue X-75
Milwaukee, WI 53202

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: George J. Marek, Esq.
Dennis P. Reis, Esq.
Quarles & Brady, Counsel for Johnson Controls Battery Group, Inc.
411 East Wisconsin Avenue
Milwaukee, WI 53202
Fax: 414/271-3552

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR Textron Inc., ON BEHALF OF

ITSELF AND ON BEHALF OF

Avco Corporation

4/9/97
Dated

OK JMS
4/9/97

Name John W. Mayers, Jr.

Title Vice President Risk Management and Insurance

Address 40 Westminster Street
Providence, RI 02903

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Jamieson M. Schiff

Address: 40 Westminster Street
Providence, RI 02903

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR THE TOWN OF BENNINGTON, ON BEHALF OF ITSELF AND ON BEHALF OF THE BENNINGTON SELECT BOARD

May 2, 1997
Dated

Stuart A. Hurd

Name Stuart A. Hurd

Title Town Manager

Address 205 South Street
P.O. Box 469
Bennington, VT 05201

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Stuart A. Hurd

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR Add, Inc., ON BEHALF OF

ITSELF AND ON BEHALF OF _____

_____

April 16, 1997
Dated

Paul E. Kritzer

Name Paul E. Kritzer

Title Secretary

Address c/o Edward B. Witte
Foley & Lardner
777 E. Wisconsin Avenue
Milwaukee, WI 53202

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: _____

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR BENNINGTON COLLEGE, ON BEHALF OF

ITSELF AND ON BEHALF OF NO OTHER PARTY

April 15, 1997
Dated

Name Lawrence W. Lee

Title Vice President for Finance & Administration

Address Route 67A, Bennington, VT 05201

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Same as Above

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

GCDC, Inc. and
Bennington Iron Works, Inc.

FOR ______________________________, ~~ON BEHALF OF~~

~~ITSELF AND ON BEHALF OF~~ ______________________

____

April 16, 1997
Dated

By: ______________________

Name Douglas C. Pierson

Title Attorney

Address 253 South Union Street
Burlington, Vermont 05401

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Douglas C. Pierson

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR Chemfab Corporation, ON BEHALF OF

ITSELF AND ON BEHALF OF _____

_____

APRIL 10, 1997
Dated

Charles Tilgner III V.P.

Name CHARLES TILGNER III

Title VICE PRESIDENT

Address CHEMFAB CORPORATION
701 DANIEL WEBSTER HIGHWAY
PO BOX 1137
MERRIMACK, NH 03054

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: MICHAEL J. QUINN

McLANE, GRAF, RAULERSON & MIDDLETON
15 NORTH MAIN STREET
CONCORD, NH 03301-4945

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR Courtaulds Structural Composites, Inc., ON BEHALF OF

ITSELF AND ON BEHALF OF _____

_____

4/17/97
Dated

Name Lynn L. Bergeson

Title Counsel

Address Weinberg, Bergeson & Neuman
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Washington, D.C. 20005

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Lynn L. Bergeson

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR CLR CORPORATION, ON BEHALF OF

ITSELF AND ON BEHALF OF SIBLEY MANUFACTURING CO., INC.

Dated 4/15/97

Name J. ARTIE ROGERS

Title VICE PRESIDENT, FINANCE

Address c/o ROY L. BERNSTEIN, SCHWARTZ & FREEMAN
401 NORTH MICHIGAN AVENUE
SUITE 1900
CHICAGO, IL 60611

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: ROY L. BERNSTEIN
SCHWARTZ & FREEMAN
401 NORTH MICHIGAN AVENUE
SUITE 1900
CHICAGO, IL 60611

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR MASCOTECH, INC., ON BEHALF OF ITSELF AND ON BEHALF OF Schmelzer Corporation and Saturn Electronics and Engineering, Inc.

April 16, 1997
Dated

Name Timothy Wadhams

Title Vice President/Treasurer

Address 21001 Van Born Road, Taylor, MI 48180

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Scott A. Halpert
Assistant Corporate Counsel

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR Southwestern Vt. Medical Center, ON BEHALF OF

ITSELF AND ON BEHALF OF Henry W. Putnam Memorial Health Corporation and its' Subsidiaries

April 15, 1997
Dated

Julia G. Bolton

Name Julia G. Bolton

Title Senior Vice President

100 Hospital Drive
Address Bennington, VT 05201

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Craig Ghidotti

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR Central Vermont Public Service Corporation, ON BEHALF OF ITSELF AND ON BEHALF OF Connecticut Valley Electric Company, Inc.

4/14/97
Dated

Name Hans G. Huessy

Title Associate Corporate Counsel

Address 77 Grove Street, Rutland, VT 05701

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Hans G. Huessy, Esq.

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR OCEAN VIEW CAPITAL, INC. (F/K/A, TRIANGLE WIRE & CABLE, INC.), ON BEHALF OF ITSELF AND ON BEHALF OF _____.

_____

APRIL 22, 1997
Dated

_____

Name SHARAD BHATIA

Title ASSISTANT GENERAL COUNSEL

Address 10 LINCOLN CENTER
LINCOLN, RI 02806

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: SHARAD BHATIA

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR H. M. T. COMPANY, INC., ON BEHALF OF
ITSELF AND ON BEHALF OF HENRY M. TUTTLE CO., INC.
(PREDECESSOR OF H. M. T. COMPANY, INC.)

4/16/97
Dated

Walter O Noyes

Name WALTER O. NOYES

Title PRESIDENT

Address 308 EZRA ST.
BENNINGTON, VT. 05201

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: WALTER O. NOYES

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR State of Vermont Agency of Transportation

ON BEHALF OF ITSELF

4/14/97
Dated

Name Glenn Gershaneck

Title Secretary of Transportation

Address 133 State Street
Montpelier, Vermont 05633

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Attorney General
State of Vermont
109 State Street
Montpelier, Vermont 05609

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR Vermont Bag and Film, Inc., ON BEHALF OF

ITSELF AND ON BEHALF OF Vermont Bag and Film, Inc.

5/1/97
Dated

Name James Comi, Jr.

Title President

Address 160 BenMont Ave, Bennington, Vermont

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: James Comi, Jr.

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR U.S. TSUBAKI, INC., ON BEHALF OF

ITSELF AND ON BEHALF OF _____

_____

4/15/97
Dated

Name MICHAEL J. QUINN

Title ATTORNEY

D'ANCONA & PFLAUM

Address 30 N. LaSALLE ST. #2900

CHICAGO, IL 60602

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: MICHAEL J. QUINN

APPENDIX A

NTCRA Action Memorandum

U.S. ENVIRONMENTAL PROTECTION AGENCY
NEW ENGLAND REGION
J.F.K. FEDERAL BUILDING, Boston, MA 02203

MEMORANDUM

DATE: December 19, 1994

SUBJ: Bennington Landfill Superfund Site - Request for a Non-Time Critical Removal Action at the Bennington Landfill Superfund Site, Bennington, Vermont

FROM: Indira Balkissoon, Remedial Project Manager
Daniel Winograd, Assistant Regional Counsel

TO: John DeVillars
Regional Administrator

THRU: Frank Ciavattieri, Acting Director
Waste Management Division

Edward Conley, Director
Environmental Services Division

Pam Hill
Deputy Regional Counsel

I. PURPOSE

This Action Memorandum requests and documents your approval of the non-time-critical removal action (NTCRA) described herein for the Bennington Landfill Superfund Site, Bennington, Vermont (the Site). In general terms, the NTCRA consists of: a composite barrier low permeability cap with drainage controls; cap maintenance; excavation of contaminated soils and sediments and consolidating them within the existing landfill; leachate collection; upgradient groundwater isolation; gas management; and site management and institutional controls. EPA anticipates that this NTCRA will be performed by the Potentially Responsible Parties (PRPs) under EPA oversight pursuant to an administrative order by consent.

This NTCRA will ensure that EPA can provide a timely response to effectively minimize threats to public health or welfare or the environment which may result from the continuing release and threat of release of hazardous substances at and from the Site. This approach is consistent with EPA's new Superfund Accelerated Cleanup Model (SACM).

The overall goal of the NTCRA is to minimize the migration of contaminants from the landfill to groundwater. The secondary goals of the NTCRA are to assure that landfill gas emissions are being adequately collected and controlled by the gas collection

system and to prevent direct contact by humans with contaminated soil or waste material within the landfill and drainage pond area.

While the NTCRA will accelerate the overall site cleanup by containing and reducing site contamination, it does not constitute a complete cleanup plan for the Site. EPA will select a final remedial action in a record of decision (ROD). The ROD will define the levels of contaminant reduction necessary for long-term public health and environmental protection, and define what steps, if any are necessary to address restoration of the contaminated groundwater.

II. SITE CONDITIONS AND BACKGROUND

A. Site Description

CERCLIS ID NO.: VDT981064223
Site ID. No.: C2
Category: Non-time-critical

1. Removal Site Evaluation

The Site was placed on the National Priorities List on March 31, 1989. Consistent with EPA requirements for NPL sites, EPA-New England's Emergency Planning and Response Branch has evaluated the Site every other year to determine if conditions justify an emergency or time critical removal action. These biannual assessments have thus far concluded that emergency or time critical removal actions are not necessary at the Site. The NTCRA selected in this Action Memorandum is supported by data and information gathered from sources discussed below.

Investigation of the Site began in August of 1974 when the Town of Bennington (the Town) conducted a study of the leachate at the landfill. Numerous investigations have been conducted since 1974 by the Vermont Department of Environmental Conservation (VTDEC), and the EPA. In addition, a substantial amount of information has been collected through EPA's formal initiation of a remedial investigation/feasibility study (RI/FS) in July 1991.

Site historical data indicates that a variety of wastes containing hazardous substances were disposed of at the landfill during the late 1960's and 1970's. Elevated levels of volatile organic compounds (VOCs), semi-volatiles (SVOCs), PCBs and metals have been detected in shallow groundwater, underdrain groundwater and drainage pond sediments.

Based upon the preliminary results of the RI/FS, the SACM Regional Decision Team approved the initiation of an Engineering Evaluation/Cost Analysis (EE/CA) on January 27, 1994, to assess

various options for controlling and containing the source of contamination at the Site. See EE/CA Approval Memorandum (Attachment 1).

2. Physical Location

The Site is located off of Houghton Lane three miles north of the town center in Bennington, Vermont (see Attachment 2). The Site is bordered by an area of low density residential development along Houghton Lane, to the south. The nearest residential area to the landfill is located approximately 875 feet south along Houghton Lane, by a rural residential area, an apple orchard to the west, a sand and gravel pit to the north, and a wetland area to the east where Hewitt Brook originates.

3. Site Characteristics; Site History

The Site consists primarily of a 15 acre municipal landfill and drainage pond situated on a 28 acre parcel owned and operated by the Town of Bennington (see Attachment 3). The landfill was established to comply with Title 24 § 2202 of the Vermont Statutes Annotated, and began operation in June 1969, receiving residential, commercial, and industrial solid and liquid wastes. The Town of Bennington leased the Site property for use as a landfill until 1985, when it purchased the Site property from Alden Harbour. In April 1987, the landfill closed, and it is presently utilized only for transfer, recycling, and sorting operations.

Throughout the entire period 1969-1987, residential, commercial and industrial liquid and solid wastes were disposed of in the landfill. During the period 1969 to 1975, liquid wastes from several Bennington-area industries were disposed of in an unlined lagoon at the Site. The Town of Bennington discontinued use of the lagoon in 1975, due to concerns raised by the State of Vermont regarding the threat to drinking water supplies posed by contamination migrating from the Site. After attempts to solidify the liquids within the lagoon failed, it was covered with landfill material.

A buried drainage system constructed in 1976 was designed to lower the groundwater level under the landfill in order to control the migration of contaminants from the Site. This drainage system discharges through a pipe (culvert) into an unlined ponded area on the eastern side of the Site (the drainage pond). A surface water diversion channel was constructed by the Town in 1976 to divert surface water runoff from the western portion of the landfill. Water in this diversion channel flows south along the west side of the landfill, eventually draining into a wetland area located south of the landfill.

Pursuant to the State of Vermont's Solid Waste Program Permit the landfill was closed. The VTDEC approved the Bennington Landfill Closure Plan dated March 25, 1989 prepared by Dufresne-Henry, Inc. Closure began on September 1, 1989 and was completed October 16, 1990.

4. Release or threatened release into the environment of a hazardous substance, or pollutant or contaminant

Information gathered from operational records and state and federal records indicate that hazardous substances were transported to the Site for disposal. Site investigations have detected a variety of hazardous substances in groundwater beneath and adjacent to the landfill.

Although the site historical information indicates that the buried lagoon is a potential hot spot, sampling of the buried drainage system at the culvert and leachate break-outs in four locations about the landfill perimeter indicate that the entire landfill is acting as a source. Sediment/soils within the drainage pond area, due east of the landfill contains contamination diverted from the buried underdrain system and has been identified as a hot spot. Groundwater, surface water, soil, sediment and air media were each investigated for the presence of site contaminants. The results are summarized in the following sections. All listed compounds are "hazardous substances" as defined by CERCLA § 101(14) and 40 C.F.R. § 300.5.

Groundwater

Shallow Sand and Gravel Groundwater

Shallow sand and gravel groundwater contamination at the Site consists of a mappable area of trace level VOCs extending eastward away from the landfill. A total of 19 VOCs were detected in the 55 shallow sand and gravel groundwater samples collected during the Phase 1A and Phase 1B of the remedial investigations. Three wells (B-5, B-6, and B-14) exhibit contamination which result in elevated risk estimates. The compounds representing the most significant risk to shallow sand and gravel groundwater include vinyl chloride, tetrachloroethene, Aroclor 1221, beryllium and manganese. All maximum detected concentrations of VOCs and PCBs in shallow sand and gravel groundwater were above federal and state ground water quality standards. Attachments 4 and 5 show the extent of VOC and PCB detections exceeding Maximum Contaminant Levels (MCLs) in shallow sand and gravel groundwater.

Concentrations of lead exceeding the EPA action level of 15 ppb and the Vermont Primary Ground Water Enforcement Standard of 20 ppb have been detected in ground water samples in at least 10 of the 19 monitoring wells (including all four of the Phase 1B

wells). PCBs and VOCs have also been detected in the shallow sand and gravel groundwater aquifer. More information will be provided in the ROD to fully evaluate the distribution of lead contamination in groundwater.

Shallow Sand and Gravel Groundwater

Contaminant	Max. Conc.	Federal MCL	Vermont Standard
vinyl chloride	95	2	2
trichloroethene	53	5	5
tetrachloroethene	70	5	0.7
methylene chloride	180	5	5
1,1 DCE	30	7	7
1,2 DCE	4050	70	70
benzene	25	5	5
PCBs	7.3	0.5	0.08
lead	120	15*	20
beryllium	5.4	NA	NA
total manganese	23,000	NA	NA
dissolved manganese	21,000	NA	NA

NA = Not Available
* = Action Level
All data is expressed in parts per billion (ppb).

Note: This table includes Phase 1A and Phase 1B information and differs slightly from the table in Attachment 1 which includes only Phase 1A data.

Surface and Subsurface Soils and Exposed Sediments

Sediment samples, collected from several seasonal water bodies were combined with surface soil samples because sediment samples from these areas are not submerged during drier periods of the year (late spring, summer, early autumn) when receptors are likely to come in contact with these sediments.

Sediments from the drainage pond and the landfill underdrain are treated in a manner similar to surface soils because these areas are typically dry during periods of the year when receptors are most likely to come in contact with them.

Aroclor 1242 was detected in surface and subsurface soils/exposed sediments at the underdrain discharge area, in the drainage pond, and the area east of the drainage pond (see Attachments 6 and 7).

Surface and Subsurface Soils and Exposed Sediments:

Contaminant	Max. Conc.	Action Level#
PCBs	14,000,000	1,000

Based on "Guidance on Remedial Actions for Superfund Sites with PCB Contamination", OSWER Directive No. 9355.4-01, August 1990, Table 3-1, Recommended Soil Action Levels for Residential Land Use and U.S. Fish and Wildlife Letter dated April 13, 1994.

All data is expressed in parts per billion (ppb)

5. NPL Status

The Site was proposed for the National Priorities List (NPL) in the Federal Register on June 24, 1988 (53 Fed. Reg. 23,978). The Site was listed on the NPL on March 31, 1989 (final rule update # 5, 54 Fed.Reg. 13,295). The Hazard Ranking Score for the Site was 49.07. In accordance with the statutory requirements for NPL sites, the Agency for Toxic Substances and Disease Registry (ATSDR) completed a Preliminary Health Assessment for the Site. The ATSDR report recommended that site access to certain areas be restricted and private wells be monitored.

Since June 1991, EPA has overseen the performance of the Phase 1A and Phase 1B of the remedial investigation by the Settling Parties and their consultant McLaren/Hart pursuant to an Administrative Order by Consent. To date, the remedial investigation report and human health risk assessments have been submitted in a draft form and draft final form respectively and have not yet been approved by the Agency. The feasibility study should be completed in 1995.

B. Other Actions to Date

1. Previous Actions

In August 1986, the VTDEC Waste Management Division, Department of Water Resources and Environmental Engineering, carried out a site inspection of the landfill. Groundwater samples were collected from private and on-site wells, landfill underdrain discharge pipe. On-site surface water and sediment samples were also collected. Contamination was detected in samples collected from the landfill underdrain outflow. The results indicate that volatile organic compounds (VOCs), semivolatile organic compounds (SVOCs) and polychlorinated biphenyls (PCBs) were not detected in private wells. Several of the on-site monitoring wells contained VOCs, and SVOCs. Benzene, ethylbenzene, toluene, xylene, naphthalene, di-n-butyl phthalate, ethyl phthalate, 2-

methylnaphthalene, p-chloro-m-cresol, 4-methylphenol, and PCBs were detected in samples collected from the outflow of the underdrain at the culvert. Nickel, lead, and arsenic were also detected in the underdrain water samples and in sediment samples.

In February 1987 the VTDEC prepared a report entitled "Bennington Landfill, Houghton Lane, Bennington, Vermont 05201, USEPA #:VTD 981064223, Potential Hazardous Waste Site, SI, February, 1987" (VTDEC 1987 Report). This report recommended that a Remedial Investigation/Feasibility Study (RI/FS) be conducted at the Site.

The Town of Bennington has taken several actions to reduce the potential for the generation of leachate. These actions include surface water and groundwater collection and diversion measures and the installation of a 24-inch soil cover to minimize leachate generation by reducing infiltration from rainwater and snowmelt.

Following the Site's listing on the NPL, EPA conducted a site assessment. Contamination detected in samples collected during this investigation revealed similar results to the VTDEC 1987 Report.

In 1993 the EPA collected samples from domestic wells adjacent to the Site. Based on testing to date, the concentration of chemicals in private wells in the vicinity of the site do not exceed drinking water standards.

2. Current Actions

The Town is required to protect the effectiveness of the existing soil cover; conduct post-closure water quality monitoring of groundwater, and surface water; and provide post-closure maintenance through routine inspection pursuant to the Bennington Landfill Closure Plan approved by VTDEC.

Additionally, the Town has contracted VICON Recovery System to operate a transfer station adjacent to the closed landfill. VICON began operations at the Site in July 1, 1987.

As mentioned in above in Section II.A.1, concurrent with this RI/FS the SACM Regional Decision Team recommended that an EE/CA be conducted to control contamination of groundwater by the landfill as expeditiously as possible (see EE/CA Approval Memorandum, Attachment 1). The EE/CA evaluated the cost, effectiveness, and implementability of the various response actions to control the source of contamination at the Site. The Settling Parties conducted the EE/CA under EPA oversight pursuant to the existing RI/FS Administrative Order by Consent.

The Settling Parties submitted a draft EE/CA on April 15, 1994. EPA provided comments regarding this document in a letter dated

May 24, 1994. The Settling Parties resubmitted the draft EE/CA document on June 25, 1994. On August 10, 1994 EPA disapproved this document and modified Sections 3.4.2.1 to 3.4.2.3, Sections 6.0 and Tables 4-5 Chemical-Specific ARARs, Table 4-6 Action-Specific ARARs and Table 4-7 Location-Specific ARARs of this document. EPA held a public informational meeting on July 21, 1994 to present the EE/CA and the EPA's preferred alternative (See EE/CA Fact Sheet, Attachment 8). EPA then held a public hearing on September 13, 1994 to receive oral comments. The public comment period began August 15, 1994 and ended on September 15, 1994. The NTCRA selected in this Action Memorandum is EPA's formal decision stemming from the EE/CA process.

EPA will select a final remedial action for this Site in a record of decision (ROD). The ROD will define the levels of contaminant reduction which are necessary for long-term public health and environmental protection. The ROD will also define what specific steps, if any, are necessary to address restoration of the contaminated groundwater.

C. State and Local Authorities' Roles

1. State and Local Actions to Date

The State of Vermont regulated the landfill under the Solid Waste Management Program from 1969 to the present. In that capacity, the State has required the Town of Bennington to close the landfill according to appropriate Vermont Solid Waste Requirements. The State supported the inclusion of the Site on the NPL, and has reviewed and commented on the various components of the RI/FS. EPA consulted with the State regarding the performance of a NTCRA at the Site, and the State indicates its full support for this expedited approach to site cleanup.

2. Potential for Continued State and Local Response

The state and local authorities are expected to maintain a high level of interest in the Site. Additionally, EPA expects that there will continue to be local interest regarding the Site since the Town has three Superfund Sites. The Town is one of the Potentially Responsible Parties (PRPs) likely to be obligated to share costs and post-removal site control activities under an administrative order for the NTCRA. The State is expected to review and comment on the remaining RI/FS activities, as well as the final selection of a remedial action.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES

Section 300.415(b)(2) of the National Contingency Plan (NCP) lists a number of factors for EPA to consider in determining whether a removal action is appropriate, including:

- (i) Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants;
- (ii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;
- (iv) High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate;
- (v) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released.

The site conditions as discussed in Part II, of this Action Memo (and as described in greater detail in the Initial Site Characterization Report) demonstrate that there is a continuing release and migration of hazardous substances from the source area at the landfill to groundwater and to the surface and subsurface soils and exposed sediments in the drainage pond area. The release of hazardous substances to the groundwater has resulted in exceedances of federal and state drinking water standards, and thereby poses a potential threat to future residential users of the shallow sand and gravel groundwater.

A human health risk assessment evaluated potential carcinogenic and noncarcinogenic risks associated with contaminants detected in ground water, soils, sediments, surface water, and air at the Site. EPA has not identified a single value that represents a significant incremental cancer risk. However, the NCP target risk range for the Superfund Sites has been set at approximately 10^{-4} (1 in 10,000) to 10^{-6} (1 in 1,000,000) per environmental medium (NCP, 1990). Potential noncarcinogenic effects were evaluated based on a comparison of chemical specific chronic exposure doses with corresponding protective doses derived from health criteria. The result of this comparison is expressed as the Hazard Quotient (HQ). A HQ that exceeds unity (one) suggests a greater likelihood of developing an adverse subchronic, or chronic toxic effect.

The human health risk evaluation indicates a carcinogenic risk of $4x10^{-3}$ and a noncarcinogenic HQ of 200 for shallow sand and gravel ground water based upon a reasonable maximum exposure from

ingestion of shallow sand and gravel groundwater by a future residential user. Presently, only three wells on site (i.e. Wells B-5, B-6, and B-14) exhibit contamination which results in elevated human health risk estimates. The compounds representing the most significant risks include vinyl chloride, PCE, Aroclor 1242, arsenic, beryllium and manganese. All maximum detected concentrations of VOCs and PCBs in shallow sand and gravel groundwater were above federal and state ground water quality standards. Based on testing to date, the concentration of chemicals in private wells in the vicinity of the site do not exceed drinking water standards.

Data for sediments was evaluated in two ways 1) from a single exposed underdrain sediment sample (PCB concentration = 14,000 mg/kg); and 2) from drainage pond, and other exposed sediments and surface soils. This risk evaluation indicates that the carcinogenic risk estimate associated with ingestion of and dermal contact with the underdrain sediment was $2x10^{-2}$ and $2x10^{-3}$ for the future resident and current trespasser, respectively. Hazard indices of 30, 300, and 20 were estimated for exposures to underdrain sediments by a current trespasser, child resident, and adult resident, respectively. These scenarios assume that the potential receptor's daily intake of soil would be limited to the culvert area.

Concentrations of Aroclor 1242 within the sediment of the drainage pond are likely to adversely impact benthic diversity and insectivore species inhabiting the drainage pond.

The ecological risk assessment indicates that elevated concentrations of cadmium and PCBs (Aroclor 1016 and 1248) may adversely impact insectivore foraging within the open field east of the drainage pond area. Additionally, elevated PCB concentrations within the drainage pond may affect mink reproduction.

The mean level of PCBs within prey items of the mink are above a concentration associated with mink reproductive failure. This potential risk to mink is attributed primarily to the elevated PCB concentrations detected within the drainage pond.

Based upon the NCP factors listed under Section 300.415 (b)(2) and outlined above, a potential threat exists to public health or welfare or the environment. A removal action is therefore appropriate to abate, prevent, minimize, stabilize, mitigate, or eliminate such threat. In particular, a removal action is necessary to control and contain the release of hazardous substances from the landfill through source control measures.

This removal action is designated as <u>non-time critical</u>

because more than six months planning time is available before on-site activities must be initiated. Prior to the actual performance of a non-time critical removal action at this Site, Section 300.415(b)(4) of the NCP requires that an EE/CA be performed in order to weigh different response options.

IV. ENDANGERMENT DETERMINATION

Actual or threatened releases of hazardous substances from this Site, if not addressed by implementing the response action selected in this Action Memorandum, may present an imminent and substantial endangerment to public health, or welfare, or the environment.

V. PROPOSED ACTIONS AND ESTIMATED COSTS

During the EE/CA process, EPA developed NTCRA objectives to evaluate source control options for the Site. Those objectives are:

Landfill Area:

- Prevent, to the extent practicable, direct contact with and ingestion of soil/debris within the landfill and beneath the landfill.
- Prevent, to the extent practicable, the potential for water to infiltrate through the landfill debris mass.
- Control, to the extent practicable, surface water run off to minimize erosion.
- To the extent practicable control landfill gas so that methane gas does not present a fire or explosion hazard and in addition, prevent the inhalation of landfill gas containing hazardous substances, pollutants or contaminants by meeting state and federal standards.
- Prevent, to the extent practicable, the saturation of the landfill debris mass from upgradient groundwater.
- Prevent, to the extent practicable, the migration of contaminated ground water and leachate beyond the boundary of compliance.

Drainage Pond and Culvert Area :

- Prevent, to the extent practicable, the migration of contaminants from the soils and sediments in the drainage pond and culvert area to the groundwater.

- Prevent, to the extent practicable, direct contact with and ingestion of soil and sediments in the drainage pond and culvert area.

- Prevent, to the extent practicable, ecological impacts from contaminants in the drainage pond and culvert areas.

Pursuant to EPA guidance on EE/CAs, alternatives were evaluated based upon effectiveness, implementability, cost, and compliance with applicable relevant and appropriate requirements (ARARs). Further, alternatives which exceed $2 million were evaluated to determine their consistency with future remedial actions to be taken at the Site.

In developing the range of alternatives to be evaluated in the EE/CA, EPA considered Section 300.415(d) of the NCP as well as other relevant guidance (including the Presumptive Remedy Guidance). Section 300.415(d) of the NCP identifies various removal actions which may be appropriate in given situations, including, in pertinent part:

> (2) Drainage controls, for example, run-off or run-on diversion - where needed to reduce migration of hazardous substances;
>
> (4) Capping of contaminated soils or sludges - where needed to reduce migration of hazardous substances or pollutants or contaminants into soil, ground or surface water, or air;
>
> (6) Excavation, consolidation, or removal of highly contaminated soils from drainage or other areas - where such actions will reduce the spread of the release; and
>
> (8) Containment, treatment, disposal, or incineration of hazardous materials - where needed to reduce the likelihood of human, animal, or food chain exposure.

The NTCRA detailed below is the alternative which will best achieve all of the NTCRA objectives, taking into account NCP requirements and relevant guidance documents.

A. Proposed Actions

1. Proposed Action Description

The major components of the NTCRA are as follows:

- Building a composite barrier low permeability cap with drainage controls to prevent the infiltration of rain and surface water into the landfill;

- Excavating contaminated soils and sediments exceeding action level from the drainage pond and underdrain discharge pipe area and consolidating them with the existing landfill;
- Cap maintenance;
- Installation of a gas management system;
- Collecting leachate from the existing underdrain and treating it off-site to remove contaminants;
- Isolating groundwater from areas upgradient of the landfill; and
- Site management and institutional controls.

The NTCRA will be implemented to achieve the following Performance Standards:

LANDFILL CAP: The landfill cap shall be designed, constructed, operated, and maintained to meet the performance requirements of the Resource Conservation and Recovery Act ("RCRA") Subtitle C regulations specified in 40 C.F.R. §§ 264.19, 264.310 and 264.111. These standards are incorporated by reference into the Vermont Hazardous Waste Management Act, 10 V.S.A. Chapter 159. The cap shall also be designed to meet the requirements of the following EPA technical guidance documents: "Final Covers on Hazardous Waste Landfills and Surface Impoundments" (EPA/530-SW-89-047, July 1989); "Construction Quality Management for Remedial Action and Remedial Design Waste Containment Systems" (EPA/540/R-92/073, October 1992) and Quality Assurance and Quality Control for Waste Contaminant Facilities" (EPA/600/R-931/182). The composite barrier cap will achieve the following minimum requirements:

-- The base layer will be composed of unclassified fill material. This material is used to establish the base grade of the landfill. The landfill should be graded and sloped to attain the minimum slope steepness practical, to reduce erosion. Benches and terraces should be installed to control surface water and within cap drainage. The existing landfill cap may be incorporated into this layer if appropriate.

-- The gas collection layer will be installed if appropriate. Additional data is required during the design phase. EPA expects to evaluate landfill gas sample results collected during the design phase, to determine if federal or state air quality standards are exceeded (see ARARs table). At this time, there is no gas data available to make the determination that a passive system will protect public health. If federal or state air quality standards are exceeded, an active gas system will be required.

If required, the active gas management system will involve the use of vertical wells or an equivalent method to increase the flow of landfill gases to the collection system. The active gas

management system will involve the placement of a sufficient number of vertical gas collection wells and vents to prevent the buildup of methane and to provide for the collection and treatment of landfill gases containing hazardous substances. The active gas collection system will also be designed to prevent or minimize, to the extent practicable, the escape of landfill gases containing hazardous substances.

If Vermont Air Standards are not exceeded, the passive gas management system will involve installing gas vents into the cap. A sufficient number of gas vents will be installed: (1) to prevent the harmful buildup of methane and/or carbon dioxide, and (2) to provide for the collection and treatment of landfill gases containing hazardous substances. The passive gas venting system will be operated and maintained as part of the maintenance of the cap. Landfill gas treatment, to be designated during the design process, will continue until a demonstration is made that hazardous substances in the landfill gas do not represent a potential threat to human health or the environment. In making the demonstration and in monitoring gas emissions, the landfill gas will be tested at the source of emission (e.g. at the gas vents).

A passive gas management system, if appropriate, will include a gas collection layer with a minimum thickness of 30 cm and will be located between the low-permeability soil liner and the base layer. Materials used in the construction of the gas layer should be coarse-grained, porous materials such as those used in the drainage layer. Geosynthetic materials may be substituted for granular materials in the vent layer, which channel gases to vertical risers if it can be shown that they provide a level of performance equivalent to a 30 cm granular layer. Equivalence is based upon the ability of the design to efficiently remove any gases produced, resist clogging, prevent infiltration, withstand expected shallow sand and gravel pressures, and function under the stresses of construction and operation. The number of vertical risers through the cover will be minimized and located at high points in the cross-section, and designed to prevent water infiltration through and around them. Alternative designs will also be considered such as perforated vertical collector pipes penetrating to the bottom of the landfill. Several cover penetrations may be required for each stand pipe. The pipes will be securely sealed to the low-permeability layer.

-- The <u>bottom low hydraulic conductivity layer</u> will be installed to minimize potential leakage through the top low hydraulic conductivity geomembrane, into the landfill. This layer acts as a safeguard to the geomembrane and is generally made of clay or a geo-synthetic clay liner (GCL). This layer shall be constructed to achieve a maximum hydraulic conductivity no greater than 1 x 10^{-7} cm/sec. In areas where clay or GCLs cannot be used due to

steep slopes, the bottom low hydraulic conductivity layer shall be comprised of at least 2 feet of material that is more resistant to sliding than clay. In these areas, the bottom layer should have a minimum hydraulic conductivity of 1 x 10^{-5} cm/sec yet has similar low hydraulic conductivity characteristics to clay. Only areas that are too steep for clay or a GCL and which cannot be regraded should be allowed a lesser standard.

-- The top low hydraulic conductivity layer will be a synthetic barrier. This will be the main barrier which prevents water infiltration from entering the landfill. This synthetic barrier will be a type of flexible geomembrane to be determined during design. The synthetic membrane, which is at least 40 ml thick, will be selected to prevent infiltration and minimize the potential for sliding.

-- A drainage layer will be installed above the synthetic barrier to allow water to drain off the synthetic barrier and to prevent ponding of water over the synthetic barrier. This layer will be composed of either 12 inches of sand with a minimum hydraulic conductivity of 1 X 10^{-2} cm/sec or a synthetic material with a transmissivity of at least 3 x 10^{-5} m^2/sec. The granular material should be no coarser than 3/8 inch (0.95 cm) and classified as SP; it should be smooth and rounded and should contain no debris that could damage the underlying flexible membrane liner (FML), nor should it contain fines that might lessen permeability.

-- The top layer of the cap will be the vegetative cover. This layer will be a minimum of 24 inches, the top six inches to be topsoil or equivalent material for the establishment of a well vegetated cover over the landfill. The top layer will: (i) provide frost protection; (ii) provide adequate water-holding capacity to attenuate rainfall/snowmelt infiltration to the drainage layer and to sustain vegetation through dry periods; and (iii) provide sufficient thickness to allow for expected long-term erosion losses. Deep rooted plants that could damage the drainage and barrier layers will not be allowed to grow on the cover. A filter fabric may be placed between the top layer and the drainage layer to minimize fill material from clogging the drainage layer.

Wetlands impacted by the cap construction or soil excavation activities should be minimized. Wetland boundaries should be well-defined prior to construction activities. Potential impacts should be outlined prior to activities and realized impacts should be mitigated. Restoration or replication of any degraded wetland areas should be address as part of the detailed wetland impacts mitigation plan.

EROSION AND SEDIMENT CONTROLS: Surface water drainage controls will be constructed to prevent erosion of the cap and must be

capable of handling the 100 year, 24 hour storm event, to the extent practicable. As determined by the final NTCRA design, drainage channels will be installed in certain areas on top and perimeter of the landfill cap to channel runoff away from the landfill. The final slopes should be designed to minimize the formation of erosion rills and gullies and to limit total erosion to less than 2.0 tons/acre/year.

SURFACE WATERS: The point of compliance for any point source surface water releases resulting from this action, consistent with the NCP, shall be the point or points where the release enters the surface water body (wetland south of the landfill, ponds A, B, and C and Hewitt Brook). Any point source discharge to a surface water shall comply with the NPDES program under Section 402 of the federal Clean Water Act, and the Vermont Water Quality Standards and storm water discharge requirements promulgated pursuant to 10 VS Chapter 47 (Vermont Water Resources Board, effective July 1994).

AIR: The point of compliance for air, consistent with the NCP, shall be the point(s) of the maximum exposed individual, considering reasonably expected use of the Site and surrounding area. The maximum exposed individuals include: (1) adjacent residents; (2) operation and maintenance personnel; and (3) individuals working at the transfer station facility. The gas collection system shall not allow for an unacceptable risk of exposure to the maximum exposed individuals by controlling the release of landfill gas and treating collected landfill gas. The gas collection and treatment system shall also comply with federal and state air regulations, including but not limited to Vermont Air Pollution Control (10 VSA Chapter 5) and the federal Clean Air Act.

EXCAVATION AND CONSOLIDATION: All surface and subsurface soils and exposed sediments exceeding the PCB action level of 1,000 ppb as previous referenced in Section II.A.4 will be excavated and consolidated within the waste management unit. All excavated soils and sediments will be hauled and consolidated to a location predetermined by EPA within the existing landfill limits 30 to 60 feet above the water table and covered over by the composite barrier cap. The PCB contaminated soils and sediments must be placed within the existing landfill limits in order to achieve a level of performance equivalent to incineration is achieved as required by the Toxic Substances Control Act (TSCA) (40 CFR 761.60 (a)). Areas where PCBs exceed the action levels include the drainage pond area, underdrain area (soils and sediments located in the area of the underdrain discharge pipe) and soils and sediments east of the drainage pond area. The EE/CA estimated a volume of approximately 1,500 cubic yards of soils and sediments that exceed action levels in the cost estimate.

LEACHATE/GROUNDWATER ISOLATION: An upgradient groundwater isolation system will be used to meet the response action objectives by preventing additional groundwater movement into the landfill mass and preventing the migration of leachate and groundwater beyond the boundary of compliance. Upgradient groundwater (west and north) will be intercepted utilizing a slurry wall with an upgradient toe drain or interceptor trenches to redirect flow. Prior to implementation of an upgradient groundwater isolation system the detailed design must present the rationale used to assess the impact of the upgradient groundwater diversion system on the wetland south of the landfill, ponds, and in the Hewitt Brook drainage area.

COLLECTED LEACHATE AND GROUNDWATER: The leachate collection system may be used to meet the response action objective of preventing the landfill leachate and groundwater from impacting groundwater. Leachate collection utilizing the existing leachate collection piping network and leachate collection can be accomplished by installing a sump at the downgradient end of the existing landfill underdrain system. The EE/CA anticipates that leachate collection is expected to be unnecessary after the first year due to upgradient leachate/groundwater isolation. The design should include a description of the decision making criteria to determine that collection and treatment of leachate is no longer necessary. In addition, provisions should be made for the collection and treatment of leachate, if leachate collection must continue beyond the one year prediction.

The collected leachate and groundwater would be transferred to equalization or storage tanks. These tanks would serve to equalize influent concentrations and provide storage prior to implementation of the chosen off-site treatment option. Off-site treatment technologies for collected leachate and groundwater must be designed to meet the performance standards for collected leachate and groundwater treated and disposed off-site shall include but not be limited to: "RCRA Regulatory Status of Contaminated Groundwater" (EPA, November 13, 1986); "40 CFR § 300.440 Procedures for planning and implementing off-site response actions"; "CERCLA Site Discharges to POTWs Guidance Manual" (EPA 540 G-90 005); and pre-treatment requirements promulgated pursuant to section 403 of the federal Clean Water Act.

INSTITUTIONAL CONTROLS: Institutional Controls shall ensure the long-term integrity of the landfill cap, leachate collection and treatment, leachate/groundwater isolation, landfill gas management systems. These controls including a fence shall prohibit any activity at the Site which would interfere with or compromise the landfill cap and other components of the removal action. Such controls will also require EPA approval prior to

the commencement of any future activities at the Site which may impact the landfill cap or its related systems.

MONITORING:
Monitoring of the implemented removal action is required to verify that the removal action is achieving the performance standards and the removal action objectives. The removal action will be monitored for the following key parameters:

1) impact of the cap on the groundwater quality and potentiometric surface;

2) impact of the cap on chemical characteristic and quantities of leachate generated;

3) the ability of the cap to adequately control landfill gas;

4) the ability of the cap to prevent erosion and resist settlement; and

5) the ability of the cap to divert surface water.

2. Contribution to Remedial Performance

Based upon the past experience gained at other Superfund municipal landfills, EPA has concluded that containment (i.e., capping and its associated drainage and collection systems) is generally the most practicable and appropriate response measure to control the source of contaminants at a landfill and to minimize the further migration of such contaminants to groundwater, surface water, soil or air. See Landfill Guidance and "Presumptive Remedy for Municipal Landfill Sites" (Public. 9203-021, February 1993) (hereinafter "Presumptive Remedy Guidance"). This NTCRA selects such an action, and will thereby serve as a necessary first step in controlling groundwater contamination by minimizing flow of additional contaminants into the groundwater. In addition, the NTCRA will reduce any possible direct contact threats posed by landfill debris. To the extent that any future response measures are needed to restore the contaminated groundwater or to restore ecological resources (e.g., wetland), this NTCRA will not interfere with such actions and will contribute to their performance in an efficient manner by containing the contaminant source as early as possible.

The Feasibility Study (FS) is still under preparation and upon its completions, a final remedial action will be selected in a ROD. As this NTCRA only addresses source control on the footprint of the landfill and drainage pond areas, the FS and the ROD will focus on other areas and risks which are not completely addressed by the NTCRA. Reduction of shallow sand and gravel

groundwater contamination to levels within federal and state standards (or within risk-based levels developed for the remedial action) will be evaluated. This NTCRA is consistent with any of the possible response options that EPA will evaluate to restore the groundwater to its beneficial use (i.e., drinking water supply), including options such as pump and treatment systems or natural attenuation (restoration).

3. Description of Alternative Technologies

In addition to the selected NTCRA described above, which utilizes containment measures to protect human health and the environment at the Site, other general response measures were identified, screened, and analyzed in the EE/CA for potential applicability at the Site. These alternative response measures included: constructing a single barrier cap; maintaining and upgrading the existing soil cap; treating soils and sediments excavated from the drainage pond by methods such as stabilization and solidification and disposing the treated material on site; transporting soils and sediments off-site for treatment and disposal; installing a network of wells to collect contaminated groundwater and leachate; treating and disposing of collected leachate on site; and collecting and treating groundwater downgradient of the landfill.

Based upon EPA's presumptive remedy for landfills (see Landfill Guidance and Presumptive Remedy Guidance) and the screening step in the EE/CA, the detailed evaluation in the EE/CA focused on containment alternatives and management alternatives. The selected containment alternative is the composite barrier cap and excavation of contaminated soils and sediments from the drainage pond and underdrain discharge pipe area and consolidating them within the existing landfill; the selected management alternative includes institutional controls, access restrictions and the collection of underdrain leachate and groundwater; and gas collection and treatment system.

During the EE/CA process, the management and containment alternatives were evaluated independently based upon cost, effectiveness, and implementability. Cost is used to assess options of similar effectiveness and implementability. The direct capital, indirect capital, and post-removal site control costs (operation and maintenance) are estimated for each alternative. Effectiveness is based upon the ability of the alternative to meet the removal action objectives. The effectiveness evaluation also involves the assessment of federal and state applicable and relevant and appropriate requirements (ARARs), the short term risks associated with the alternative, the timeliness, and the overall protection of human health and the environment. Implementability involves the assessment of constructability and operation issues.

In the EE/CA's analysis of each alternative both management and containment were deemed effective in terms of overall protectiveness by reducing potential long-term risks at the Site and both are technically feasible. However, the containment alternative (capping) provides a greater degree of long-term protectiveness as it reduces infiltration and air emissions. The containment alternative also meets the identified ARARs for this action. The management alternatives, alone would not meet the identified ARARs, especially the RCRA closure requirements for landfills which contain RCRA hazardous wastes. Moreover, EPA has determined through its presumptive remedy for municipal landfills that containment (capping) is the most appropriate source control measure for addressing contamination at landfills.

4. EE/CA

Attachment 1 is the EE/CA Approval Memorandum, Attachment 8 is the EE/CA Fact Sheet (EPA's Proposed Plan), Attachment 9 is EPA's Response to Comments on the EE/CA and the EE/CA Fact Sheet received during the public comment period and Attachment 10 is the transcript from the Public Hearing. The EE/CA Report itself is located in the administrative record for the Site located at the Bennington Free Library and the Boston Offices of EPA.

5. Applicable or Relevant and Appropriate Requirements (ARARs)

Through the EE/CA process, EPA has evaluated the universe of federal and state applicable or relevant and appropriate requirements (ARARs) which are within the scope of this NTCRA. Attachment 11 is a list of all such ARARs. EPA has determined that the selected NTCRA will be designed, constructed, operated, and maintained to attain all of the identified ARARs, in accordance with 40 C.F.R. § 300.415(i).

TSCA Regulations 40 CFR Sections 761.60-761.79 are applicable for the PCBs in the drainage pond area since these PCBs were disposed of in the landfill prior to February 17, 1978 and subsequently migrated through a drain pipe to the soils in the drainage area. Also, because PCB contaminated soils in the drainage area will be excavated as part of the NTCRA, TSCA is applicable.

TSCA requires that PCB concentrations in soils above 50 parts per million (ppm) must be disposed of in a chemical waste landfill or in an incinerator. The proposed remediations for the landfill do not comply with all of the requirements of a chemical waste landfill. The EPA Guidance on Remedial Actions for Superfund Sites with PCB contamination (OSWER Directive No. 9355.4-01, August 1990) recognizes that some TSCA requirements specified under TSCA may not always be appropriate for existing waste disposal sites like those addressed by Superfund. One or more requirements of a chemical waste landfill can be waived when it

can be demonstrated that a waiver will not present an unreasonable risk of injury to health and the environment from PCBs, 40 C.F.R. 761.75(c)(4).

The regulations (40 CFR 761.75(b)(1)-(9)) set forth that the following requirements for a chemical waste landfill:

(b)(1) being located in certain low permeability clay or soil conditions.
(b)(2) having a synthetic membrane liner under the landfill.
(b)(3) having bottom of the landfill at least 50 feet from the historic high groundwater table.
(b)(4) including certain protective measures if in a 100 year flood plain.
(b)(5) being located in an area of low to moderate relief to minimize erosion.
(b)(6) sampling designated water courses every six months after disposal and conducting designated ground water monitoring.
(b)(7) installing a designated leachate collection system.
(b)(8) carry out proper chemical waste landfill operations.
(b)(9) installing a fence or other device to prevent unauthorized entry.

The landfill does not meet the condition of being located in low permeability clay or soil conditions by 40 C.F.R. 761.75(b)(1) to prevent migration of PCBs. However, the requirement is designed to prevent migration of PCBs from an active chemical waste landfill that has no cap. Immediately after placing PCBs in the landfill, the landfill will be closed and capped, with upgradient groundwater isolation. A RCRA Subtitle C cap with a permeability of 1×10^{-7} cm/sec together with the added redundant protection of a composite barrier cap will prevent infiltration of precipitation, preventing migration of PCBs without presenting an unreasonable risk of injury to health and the environment from PCBs. Also, upgradient groundwater isolation will prevent infiltration of rainwater and snowmelt through the waste into groundwater, preventing migration of PCBs without presenting an unreasonable risk to injury to health and the environment from PCBs.

The landfill does not meet the condition of having a synthetic membrane liner under the landfill required by 40 C.F.R. 761.75(b)(2) to prevent migration of PCB. However, the requirement is designed to prevent migration of PCBs from an active chemical waste landfill that has no cap. Immediately after placing the PCBs in the landfill, the landfill will be closed and capped, with upgradient groundwater isolation. Upgradient groundwater isolation will prevent infiltration of precipitation through the waste into groundwater, preventing migration of PCBs without presenting an unreasonable risk of injury to health and the environment from PCBs. Also, a RCRA

Subtitle C cap with a permeability of 1 x 10^{-7} cm/sec together with the added redundant protection of a composite barrier cap will prevent infiltration of precipitation and prevent migration of PCBs without presenting an unreasonable risk of injury to health and the environment from PCBs.

The landfill does not meet the condition of having the bottom of the landfill be at least 50 feet from the historic high groundwater table required by 40 C.F.R. 761.75(b)(3) to prevent migration of PCBs through contact with groundwater. However, this requirement is designed to prevent migration of PCBs from an active chemical waste landfill that has no cap. Immediately after placing the PCBs in the landfill, the landfill will be closed and capped, with upgradient groundwater isolation. Upgradient groundwater isolation will prevent infiltration of precipitation through the waste into groundwater, preventing migration of PCBs without presenting an unreasonable risk of injury to health and the environment from PCBs.

The landfill does not have to meet the 100 year flood plain requirements of 40 CFR 761.75(b)(4) because it is not located in a 100 year flood plain. Diversion structures will be constructed to meet all additional requirements of 40 CFR 761.75(b)(4) as described in Section V.

The landfill site is located in an area of low to moderate relief to minimize erosion and does meet the requirements of 40 CFR 761.75(b)(5).

The landfill meets the sampling requirements of 40 CFR 761.75(b)(6) because all of the alternatives being considered will include groundwater monitoring.

The landfill does not meet the condition of having a designated leachate collection system required by 40 CFR 761.75 (b)(7) to prevent migration of PCBs from the landfill through contact with precipitation or groundwater. However, the requirement is designated to prevent migration of PCBs from an active chemical waste landfill that has no cap. Immediately after placing the PCBs in the landfill, the landfill will be closed and capped with upgradient groundwater isolation. A RCRA Subtitle C cap with a permeability of 1 x 10^{-7} cm/sec together with the added redundant protection of a composite barrier will prevent infiltration of precipitation and prevent migration of PCBs into leachate without presenting an unreasonable risk of injury to human health and the environment from PCBs. Also, upgradient groundwater isolation will prevent infiltration of groundwater, preventing migration of PCBs into leachate without presenting an unreasonable risk of injury to health and the environment from PCBs.

The landfill has been closed since 1990. All future activities conducted at the landfill will meet the chemical waste landfill operations requirements of 40 CFR 761.75 (b)(8) because all excavated soils and sediments placed within the waste management unit will be hauled and consolidated to a location predetermined by EPA within the landfill limits and covered over by the composite barrier cap. These operations will follow an operation plan to be submitted during the design providing a detailed explanation of soil and sediment handling procedures.

The landfill will meet the fencing and other requirements of 40 CFR 761.75(b)(9) because all of the alternatives being considered will include fencing around the landfill to prevent unauthorized entry as well as adequate safety measures.

6. Project Schedule

Upon the Regional Administrator's signature of this Action Memorandum, EPA will negotiate with the Potentially Responsible Parties for performance of the NTCRA through an Administrative Order by Consent (AOC). In early Spring 1995, EPA will send out Special Notice Letters and begin negotiations. AOC negotiations should be completed by mid-1995, and design of the NTCRA will begin soon after the effective date of the AOC. Construction of the composite barrier cap should begin in the Fall 1995 and be complete by Fall of 1996. Post removal site control (PRSC) will be conducted until the NTCRA is superseded by a remedial action selected in an EPA ROD. At that time, PSCR will be incorporated into the operation and maintenance component of the remedial action, if appropriate.

B. Estimated Costs

The costs detailed below assume that the NTCRA will be performed as a PRP-lead. Therefore, only intramural costs related to oversight work are included. For extramural costs, EPA's extramural oversight costs and the projected cleanup costs for a PRP-lead response are included.

INTRAMURAL COSTS	$	80,000
EXTRAMURAL COSTS		
EPA Oversight Contractor	$	300,000
PRP Direct Costs of NTCRA (Cap Construction, Erosion and Sediment Control, Upgradient Groundwater Isolation, Leachate Collection and Treatment, Active Gas Management, Excavation and Consolidation, and Management and Institutional Controls)	$	4,221,646
PRP Indirect Costs of NTCRA (Design, Construction Management, Contingency)	$	1,836,408
Present Value of 3 Years of PRSC (7%) (Post-Removal Site Control)	$	1,735,000 (1st year)
Present Value of 2-30 Years of PRSC $135,000/yr	$	1,540,220
TOTAL COST OF NTCRA	**$**	**9,713,274**

VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

The existing landfill clay cover will continue to degrade and rain/snowmelt will continue to infiltrate into the landfill waste, percolating down into groundwater and generating leachate which will migrate into the shallow sand and gravel aquifer, causing further migration of contamination away from the landfill. In addition, contaminated leachate/groundwater from the underdrain system will continue to discharge into the unfenced unlined drainage pond area. Delayed action will increase the time required for restoration of the aquifer and allow sediment contamination in the drainage pond area to increase.

VII. OUTSTANDING POLICY ISSUES

The PCB Disposal Requirements promulgated under TSCA are applicable to the Site because the selected remedy involves disposal of soils and sediments contaminated with PCBs in excess of 50 ppm. Under the Disposal Requirements soils contaminated with PCBs may be disposed of in an incinerator, chemical waste landfil[1], or may be disposed of by an alternative method which is a destruction technology and achieves an equivalent level of performance to incineration (40 CFR 761.60(a)). In this case, excavating and consolidating soils and sediments within the same waste management unit to a location predetermined by EPA within the existing landfill limits will satisfy the requirements of a chemical waste landfill with the TSCA waiver described below. The existing passive groundwater collection system (the underdrain) is currently collecting leachate as required by the chemical waste landfill regulations. In addition, groundwater monitoring of groundwater will be instituted, as required by the chemical waste landfill regulations.

The Regional Administrator is implementing the waiver authority contained within the TSCA regulations at 40 CFR 761.75(c)(4), and is waiving certain requirements of the chemical waste landfill provisions. The provisions to be waived require construction of chemical waste landfills in certain low permeable clay conditions [40 CFR 761.75 (b)(1)], the use of a synthetic membrane liner [40 CFR 761.75 (b)(2)], locating the landfill 50 feet above the historic high water table [40 CFR 761.75(b)(3)] and, having a designated leachate collection system [40 CFR 761.75(b)(7)].

The Regional Administrator hereby determines that, for the following reasons, the requirements of 40 CFR 761.75(b)(1),(2),(3), and (7) are not necessary to protect against an unreasonable risk of injury to public health or the environment from PCBs in this case.

Low permeability clay conditions for the underlying substrate are not necessary at this site to prevent migration of PCBs. Soils and sediments over 50 ppm will be excavated and consolidated within the existing landfill limits at a location pre-determined by EPA satisfying the requirements of a chemical waste landfill as described previously. Excavating and consolidating soils and sediment with PCB concentrations over 50 ppm beneath an impermeable cap will effectively encapsulate PCBs and prevent future migration. The requirement of a synthetic membrane liner should be waived because there will be no hydraulic connection between the excavated soil and sediment mass and the groundwater or surface water. Although the water table at the Bennington Landfill Site is at a similar elevation to, or below the base of the waste within the landfill, infiltration of PCBs to the groundwater will be prevented by the impermeable cap, thereby

lowering the groundwater level. Also, installation of an upgradient groundwater isolation system will further lower the groundwater level. These factors will ensure that there will be no unreasonable risk of injury to human health and the environment if the above requirements are waived at this site.

The hydrologic requirement that the landfill must be fifty feet above the historic high water table should be waived because it is unlikely that the excavated and consolidated soils and sediments will ever come in contact with the groundwater. Immediately after placing the PCBs in the landfill, excavated materials will be consolidated and placed at a pre-determined location within the existing landfill limits, 30 to 60 feet above the water table. The requirement that the bottom of the landfill be at least 50 feet from the historic high groundwater table is designed to prevent migration of PCBs from an active chemical waste landfill that has no composite barrier low perrmeability cap. Immediately after placing the PCBs in the landfill, the landfill will be closed and capped. In addition, upgradient groundwater isolation will prevent infiltration of precipitation through the waste into groundwater, preventing migration of PCBs without presenting an unreasonable risk of injury to human health and the environment from PCBs. These factors ensure that there will be no unreasonable risk of injury to human health and the environment if the above requirements are waived at this site.

The required leachate collection system is designated to prevent migration of PCBs from the landfill through contact with precipitation of groundwater from an active chemical waste landfill that has no cap. This requirement should be waived because immediately after placing the PCBs in the landfill, the landfill will be closed and capped with upgradient groundwater isolation. A composite barrier low permeability cap will prevent infiltration of precipitation and prevent leachate formation. These factors ensure that there will be no unreasonable risk of injury to human health and the environment if the above requirements are waived at this site.

VIII. ENFORCEMENT

To date EPA has identified approximately thirty eight potentially responsible parties (PRPs) at the Site. Twenty five were issued Special Notice Letters in March 1991. Twelve of those issued Special Notice Letters entered into an Administrative Order by Consent with EPA for the performance of the remedial investigation and feasibility study. Twenty four potentially interested party letters (PIP letters) were sent out to a new group of PRPs prior to the issuance of the Proposed Plan for the Site in July 1994. Sixteen of the PIP letter recepients were issued General Notice Letters on November 1, 1994. EPA will

negotiate with the noticed parties for the performance of the non-time-critical removal action.

IX. RECOMMENDATION

This decision document represents the selected removal action for the Bennington Landfill Superfund Site, in Bennington, Vermont, developed in accordance with CERCLA as amended, and is not inconsistent with the NCP. This decision is based upon the administrative record for the Site.

Conditions at the Site meet the NCP criteria for a removal action as specified at 40 C.F.R. § 300.415(b)(2). The case team recommends your approval of the proposed removal action. The total project ceiling if approved will be $9,713,274. As the NTCRA is expected to be PRP-lead, no funds are requested at this time.

Approve ✓ Disapprove _____

John P. DeVillars, Regional Administrator

Date: 12/23/94

Bennington Landfill Superfund Site - Action Memorandum
List of Attachments

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APPENDIX B

NTCRA Statement of Work

Non-Time Critical Removal Action Statement of Work

Bennington Landfill Superfund Site

April 2, 1997

I. INTRODUCTION AND PURPOSE

This non-time-critical removal action (NTCRA) Statement of Work (SOW) defines the response activities and deliverables that the Respondents shall perform/submit in order to implement the Work required under the Consent Decree (Docket No.) at the Bennington Landfill Superfund Site in Bennington, Vermont (the "Site"). The activities described in this SOW are based upon the United States Environmental Protection Agency (EPA) Action Memorandum for the Site signed by the EPA Regional Administrator, Region I, on December 23, 1994.

II. DEFINITIONS

The following definitions shall apply to this SOW:

A. All definitions provided in Section IV of the Consent Decree are incorporated herein by reference.

B. "Design" shall mean an identification of the technology to be used for the Removal Action and its performance and operational specifications, in accordance with all applicable federal, state, and local laws, including, but not limited to:

1. all computations used to size units, determine the appropriateness of technologies, and the projected effectiveness of the NTCRA;

2. scale drawings of all system layouts identified above and including, but not limited to, excavation cross-sections, and well cross-sections;

3. quantitative analyses demonstrating the anticipated effectiveness of the NTCRA Design to achieve the Performance Standards;

4. technical specifications which detail the following:

   a. size and type of each major component; and

   b. required performance criteria of each major component;

5. specifications on the Demonstration of Compliance ambient air monitoring including equipment, monitor locations, and data handling procedures; and

6. specifications of Institutional Controls (deed restrictions, access, land easements and/or other controls as required), to be supplied with the construction plans and specifications.

C. "EPA Approval" or "EPA Review and Approval" shall mean the procedures specified in Section XI of the Consent Decree.

D. "NTCRA Order" shall mean the Administrative Order on Consent for NTCRA Design at the Bennington Landfill Site, U.S. EPA CERCLA Docket No. CERCLA-I-96-1014.

E. "Respondents' Certification" shall mean the procedures specified in Section XI of the Consent Decree.

III. SELECTED NON-TIME-CRITICAL REMOVAL ACTION

Section V.A.1 of the Action Memorandum specifies the Non-Time-Critical Removal Action for the Site. Based upon the Action Memorandum, listed below are the components of the NTCRA which shall be performed by the Respondents:

- Building a composite barrier low permeability cap with drainage controls;
- Excavating contaminated soils and sediments exceeding action levels from the drainage pond and underdrain discharge pipe area and consolidating them within the existing landfill;
- Installation of a gas management system;
- Performance of air monitoring activities as part of the Demonstration of Compliance Plan to verify that no air emissions occur which exceed applicable or relevant and

appropriate state or federal limits or represent an unacceptable threat to human health, until EPA approval of the Demonstration of Compliance Report;

- Collecting leachate and groundwater from the existing underdrain and treating it off-site to remove contaminants;

- a structure (e.g. slurry wall or interceptor trench) that isolates groundwater in the water table aquifer from the landfill waste material;

- Post-removal site control (PRSC) of the multi-layer landfill cap and associated drainage structures, gas collection and, if required, treatment system, leachate collection system, and the ground water isolation system. The PRSC shall ensure the long-term, continued effectiveness of each component of the NTCRA. PRSC does not include monitoring of Site media subsequent to the approval of the Completion of Removal Action Report; and

- Institutional Controls, including implementation of access restrictions, deed restrictions, land-use restrictions or easements and/or other controls (including a fence) shall prohibit the future use of the Site in any manner that would compromise the integrity of the cap and its related systems.

IV. PERFORMANCE STANDARDS

The Respondents shall design, construct, operate and maintain the NTCRA in compliance with the Consent Decree, this SOW, and the performance standards and all statutes and regulations identified in Section V.A.5 and Attachment 11 (ARARS Tables) of the Action Memorandum. The performance standards of the Action Memorandum are incorporated herein by reference.

The Respondents shall achieve the following Performance Standards for the NTCRA at the Site:

A. LANDFILL CAP: The landfill cap shall be designed, constructed, operated and maintained to meet the performance requirements of the Resource Conservation and Recovery Act ("RCRA") Subtitle C regulations specified in 40 C.F.R. §§ 264.19, 264.310 and 264.111. These standards are incorporated by reference into the Vermont Hazardous Waste Management Act, 10 V.S.A. Chapter 159. The cap shall also be designed to meet the requirements of the following EPA technical guidance documents: "Final Covers on Hazardous

Waste Landfills and Surface Impoundments" (EPA/530-SW-89-047, July 1989); "Construction Quality Management for Remedial Action and Remedial Design Waste Containment Systems" (EPA/540/R-92/073, October 1992) and Quality Assurance and Quality Control for Waste Contaminant Facilities" (EPA/600/R-93/182, September 1993). The composite barrier cap shall achieve the following minimum requirements:

1. Base layer shall be composed of unclassified fill material. This material is used to establish the base grade of the landfill. The landfill shall be graded and sloped to attain the minimum slope steepness practical, to reduce erosion. Benches and terraces shall be installed to control surface water and within cap drainage. The existing landfill cap may be incorporated into this layer if appropriate.

2. Gas collection layer Based upon the data collected as part of the pre-design studies, the VTDEC has determined that the VT Air Pollution Control Regulation criteria for requiring an active gas collection system would not be exceeded at the Site. Therefore, a passive gas collection system shall be included in the cap design.

The passive gas management system shall involve installing gas vents into the cap. A sufficient number of gas vents shall be installed: (1) to prevent the harmful buildup of methane and/or carbon dioxide, and (2) to provide for the collection and treatment, if necessary, of landfill gases containing hazardous substances. The passive gas venting system shall be operated and maintained as part of the maintenance of the cap. Landfill gas treatment, if required as a result of the Demonstration of Compliance Plan air monitoring, shall continue until EPA, after a reasonable opportunity for review and comment by the State, determines that treatment of the landfill gas is no longer necessary.

A gas collection layer with a minimum thickness of 15 cm (6 inches) will be located between the low - permeability soil layer and the base layer. Materials used in the construction of the gas layer shall be coarse-grained, porous materials such as those used in the drainage layer. Geosynthetic materials may be substituted for granular materials in the vent layer, which channel gases to vertical risers, if it can be shown that they provide a level of performance

equivalent to a 15 cm granular layer. Equivalence is based upon the ability of the design to efficiently remove any gases produced, resist clogging, prevent infiltration, withstand expected shallow sand and gravel pressures, and function under the stresses of construction and operation. The number of vertical risers through the cover shall be limited to the greatest degree possible. The vertical risers shall be located at high points in the cross-section and designed to prevent water infiltration through and around them. Alternative designs shall also be considered such as perforated vertical collector pipes penetrating to the bottom of the landfill. Several cover penetrations may be required for each stand pipe. The pipes will be securely sealed to the low-permeability layer.

Alternative methods to meet the performance objective of protecting the geomembrane and minimizing the lateral migration of landfill gas may be proposed.

3. Bottom low hydraulic conductivity layer shall be installed to minimize potential leakage through the top low hydraulic conductivity geomembrane, into the landfill. This layer acts as a safeguard to the geomembrane and is generally made of clay or a geo-synthetic clay liner (GCL). This layer shall be constructed to achieve a maximum hydraulic conductivity no greater than 1×10^{-7} cm/sec. In areas where clay or GCLs cannot be used due to steep slopes, the bottom low hydraulic conductivity layer shall be comprised of at least 2 feet of material that is more resistant to sliding than clay. In these areas, the bottom layer shall have a minimum hydraulic conductivity of 1×10^{-5} cm/sec. Such lower standard shall apply only for areas that are too steep for clay or a GCL and which cannot be regraded and only after EPA approval, after a reasonable opportunity for review and comment by VTDEC. EPA would accept the use of a GCL on a 4:1 slope provided the material meets the design criteria for slope stability.

4. Top low hydraulic conductivity layer shall be a synthetic barrier. This shall be the main barrier which prevents water infiltration from entering the landfill. This synthetic barrier shall be a type of flexible geomembrane to be determined during design. The synthetic membrane shall be at least 40 ml thick

and shall be selected to prevent infiltration and minimize the potential for sliding.

5. Drainage layer shall be installed above the synthetic barrier to allow water to drain off the synthetic barrier and to prevent ponding of water over the synthetic barrier. This layer shall be composed of either 12 inches of sand with a minimum hydraulic conductivity of 1 X 10^{-2} cm/sec or a synthetic material with a transmissivity of at least 3 x 10^{-5} m^2/sec. The granular material shall be no coarser than 3/8 inch (0.95 cm) and classified as SP; shall be smooth and rounded and shall contain no debris that could damage the underlying flexible membrane liner (FML) nor fines that might lessen permeability.

6. Top layer of the cap will be the vegetative cover. This layer shall be a minimum of 24 inches, the top six inches to be topsoil or equivalent material for the establishment of a well vegetated cover over the landfill. The top layer shall: (i) provide frost protection; (ii) provide adequate water-holding capacity to attenuate rainfall/snowmelt infiltration to the drainage layer and to sustain vegetation through dry periods; and (iii) provide sufficient thickness to allow for expected long-term erosion losses. Deep rooted plants that could damage the drainage and barrier layers shall not be allowed to grow on the cover. A filter fabric shall be placed between the top layer and the drainage layer to minimize fill material from clogging the drainage layer.

Wetlands impacted by the cap construction or soil excavation activities shall be minimized. Additional wetland mitigation investigations shall be incorporated into the design, utilizing accurate determination of actual wetlands affected by cap construction. Predicted water table lowering in wetland areas induced by the upgradient groundwater isolation system shall be determined as part of the design. Construction methodology shall include process operations, construction timetables and environmental controls designed to minimize impacts. Wetland boundaries shall be well-defined prior to construction activities. Potential impacts shall be outlined prior to activities and realized impacts mitigated. Restoration or replication of any degraded wetland areas shall be address as part of the detailed wetland impacts mitigation plan.

B. **EROSION AND SEDIMENT CONTROLS**: Surface water drainage controls shall be constructed to prevent erosion of the cap and shall be capable of handling the 100 year, 24 hour storm event, to the extent practicable. As determined by the final NTCRA design, drainage channels shall be installed in certain areas on top and perimeter of the landfill cap to channel runoff away from the landfill. The final slopes shall be designed to minimize the formation of erosion rills and gullies and to limit total erosion to less than 2.0 tons/acre/year.

C. **SURFACE WATERS:** The point of compliance for any point source surface water releases resulting from this action, consistent with the NCP, shall be the point or points where the release enters a surface water body (wetland south of the landfill, ponds A, B, and C and Hewitt Brook). Any point source discharge to a surface water shall comply with the NPDES program under Section 402 of the federal Clean Water Act, and the Vermont Water Quality Standards and/or storm water discharge requirements promulgated pursuant to 10 VS Chapter 47 (Vermont Water Resources Board, effective July 1994).

D. **AIR:** The point of compliance for air, consistent with the NCP, shall be the point(s) of the maximum exposed individual, considering reasonably expected use of the Site and surrounding area. The maximum exposed individuals include: (1) adjacent residents; (2) operation and maintenance personnel; and (3) individuals working at the transfer station facility. The passive gas collection system shall not allow for an unacceptable risk of exposure to the maximum exposed individuals by controlling the release of landfill gas and, if required, treating collected landfill gas. The passive gas collection system and, if required, treatment system shall also comply with federal and state air regulations, including but not limited to Vermont Air Pollution Control (10 VSA Chapter 5) and the federal Clean Air Act.

E. **EXCAVATION AND CONSOLIDATION**: All surface and subsurface soils and exposed sediments exceeding the PCB action level of 1,000 ppb (1 mg/kg) as referenced in Section II.A.4 of the Action Memorandum shall be excavated and consolidated within the waste management unit. All excavated soils and sediments above 50 mg/kg shall be hauled and consolidated to a location predetermined by EPA within the existing landfill limits 30 to 60 feet above the water table and covered over by the composite barrier cap. The PCB contaminated soils and sediments must be placed within the existing landfill limits in order to achieve a level of performance equivalent

to incineration is achieved as required by the Toxic Substances Control Act (TSCA) (40 CFR 761.60 (a)). Excavated soils and sediments with a PCB concentration below 50 mg/kg may be consolidated in any location within the limits of the cap. Areas where PCBs exceed the action levels include the drainage pond area, underdrain area (soils and sediments located in the area of the underdrain discharge pipe) and soils and sediments east of the drainage pond area. The EE/CA estimated a volume of approximately 1,500 cubic yards of soils and sediments that exceed action levels in the cost estimate.

F. LEACHATE/GROUNDWATER ISOLATION: An upgradient groundwater isolation system shall be used to meet the response action objectives by preventing additional groundwater movement into the landfill mass and preventing the migration of leachate and groundwater beyond the boundary of compliance. Upgradient groundwater (west and north) shall be intercepted utilizing a slurry wall with an upgradient toe drain, or interceptor trenches to redirect flow. Prior to implementation of an upgradient groundwater isolation system the design shall present the rationale used to assess the impact of the upgradient groundwater diversion system on the wetland south of the landfill, ponds, and in the Hewitt Brook drainage area.

G. COLLECTED LEACHATE AND GROUNDWATER: To the extent practicable and with full compliance of the performance standards specified in the EE/CA, a leachate collection system may be used to meet the response action objective of preventing the discharge from the underdrain from impacting groundwater and soil. Such leachate collection utilizing the existing leachate collection piping network may be accomplished by installing a sump at the downgradient end of the existing landfill underdrain system. The EE/CA anticipates that leachate collection is expected to be unnecessary after the first year due to upgradient leachate/groundwater isolation. The design shall include a description of the decision making criteria to determine that collection and treatment of leachate is no longer necessary. In addition, provisions shall be made for the collection and treatment of discharge, if Site data indicate discharge collection must continue beyond the one year anticipated by the EE/CA.

The collected underdrain discharge shall be transferred to equalization or storage tanks. These tanks shall serve to equalize influent concentrations and provide storage prior to implementation of the chosen off-site treatment option. Off-site treatment technologies for collected underdrain

discharge shall be designed to meet the performance standards for collected leachate and groundwater treated and disposed off-site including but not limited to: "RCRA Regulatory Status of Contaminated Groundwater" (EPA, November 13, 1986); Procedures for Planning and Implementing Off-Site Response Actions: (40 C.F.R. §300.440; "CERCLA Site Discharges to POTWs Guidance Manual" (EPA 540 G-90 005); and pre-treatment requirements promulgated pursuant to section 403 of the federal Clean Water Act. Discharge to the Bennington POTW (Publicly Owned Treatment Works) may be evaluated as a potential option for the treatment of the collected underdrain discharge.

H. INSTITUTIONAL CONTROLS: Institutional Controls shall ensure the long-term integrity of the landfill cap, leachate collection and treatment, leachate/groundwater isolation, landfill gas management systems. Access, deed restrictions, land-use restrictions or easements and/or other controls (including a fence) shall prohibit any activity at the Site which would interfere with or compromise the landfill cap and other components of the removal action. Such controls shall also require EPA and VTDEC approval prior to the commencement of any future activities at the Site which may impact the landfill cap or its related systems.

V. NTCRA DESIGN

The Respondents shall develop a final design for the selected NTCRA as described in the Action Memorandum and this SOW that meets the performance standards specified in Section IV of this SOW. This section describes the Respondents responsibilities for submitting deliverables and conducting project meetings during design.

A. DELIVERABLES

The Respondents shall submit the following deliverables to EPA and the VTDEC during the design of the selected NTCRA, pursuant to the schedule in Attachment A. Any modification of the schedule in Attachment A shall be subject to EPA approval, after a reasonable opportunity for review and comment by VTDEC. Each submitted deliverable shall require EPA Approval, after a reasonable opportunity for review and comment by VTDEC, or Respondents' Certification, whichever applies, pursuant to the schedule in Attachment A and the procedures in Section XI of the Consent Decree.

1. DESIGN PROGRESS REPORTS

On the 15th calendar day of each month, and until EPA approval of the 100% NTCRA Design, the Respondents shall submit Design Progress Reports to EPA and the VTDEC. Design Progress Reports may be combined with the monthly progress reports required under the Administrative Order by Consent for Remedial Investigation/Feasibility Study (EPA Region I CERCLA Docket No. I-91-1093) and shall be submitted with **Respondents' Certification**. The reports shall summarize all activities that have been conducted in the month preceding the Progress Report and those planned for the next two months. The Progress Reports shall also identify problems encountered and/or changes to the schedule, and shall summarize the results of sampling and tests and other data received by the Respondents.

2. CONCEPTUAL DESIGN LETTER REPORT

As required by Attachment A, the Respondents shall submit a Conceptual Design Letter Report to EPA and the VTDEC. The Conceptual Design Letter Report shall be submitted with **Respondents' Certification**, and shall include, at a minimum:

a. an outline of the NTCRA Design and the Demonstration of Compliance Plan;

b. a work plan for any pre-design studies;

c. preliminary drawings of the 3:1 and 3-5% slope sections of the cap, slurry wall, leachate/groundwater collection system, surface water controls and retention ponds in plan view and cross-section; and

d. The design basis for the composition and thickness of each layer of the cap presented in letter format, including a determination of the appropriate gas control technology and supporting information and an estimate of settlement.

3. 100% DESIGN FOR LEACHATE COLLECTION SYSTEM

As required by Attachment A, the Respondents shall submit the 100% Design for the leachate collection system to **EPA for Review and Approval**, after reasonable opportunity for review and comment by the VTDEC. The design submittal shall include, but not limited to:

a. the final design report for each of the above components including the design basis for each of the above components and the associated plans and specifications in reproducible format;

b. drawings on reproducible mylar; and

c. the Technical Specification for each of the above components which shall include, at a minimum, the items identified in Attachment E.

4. INTERMEDIATE DESIGN LETTER REPORT

As required by Attachment A, the Respondents shall submit an Intermediate Design Letter Report to EPA and VTDEC. The Intermediate Design Letter Report shall be submitted with **Respondents' Certification**, and shall include, at a minimum:

a. a revised outline of the NTCRA Design and the Demonstration of Compliance Plan, including sample checklists and a list of testing requirements, based upon EPA and VTDEC comments;

b. The results of any pre-design studies;

b. pre-final drawings of the 3:1 and 3-5% slope sections of the cap in plan view and cross section including surface drainage controls and retention ponds, slurry wall or upgradient interceptor trenches, anchor trenches, and gas collection system;

c. a description of the design basis for each layer and/or component of the NTCRA, including settlement evaluation, stability

calculations, and the HELP model assessment to evaluate infiltration through the cover system. The stability assessment shall include an assessment of the stability of the cover system, waste material, and surrounding slopes. Each key section of the stability analysis should include a discussion of the: (1) performance criteria for each failure mode; (2) soil conditions, including loading and seepage conditions; and (3) determination of factor of safety and indicate the slope failure mode. The methods to perform the above analysis shall be presented;

d. a discussion of how all identified ARARs will be complied with; and

e. draft technical specifications.

5. 100% NTCRA DESIGN

As required by Attachment A, the Respondents shall submit the 100% NTCRA Design for **EPA Review and Approval**, after reasonable opportunity for review and comment by the VTDEC. Design plans for individual components of the NTCRA may be submitted separately from the cap design. However, the design submittal for the cap shall address 100% of the total Design for each component of the NTCRA including, but not limited to:

a. the final design report including the design basis for each component and the associated plans and specifications in reproducible format;

b. drawings on reproducible mylar; and

c. the NTCRA Technical Specification which shall include, at a minimum, the items identified in Attachment E.

6. DEMONSTRATION OF COMPLIANCE PLAN

In accordance with the NTCRA Schedule (Attachment A), the Respondents shall submit the Demonstration of Compliance Plan for **EPA Review and Approval**, after reasonable opportunity for review and comment by the VTDEC. The Demonstration of Compliance Plan shall describe in detail all activities that shall be conducted to comply with and to demonstrate compliance

with all performance standards, including but not limited to all applicable, relevant and appropriate requirements (ARARs). The Demonstration of Compliance Plan shall also include a Field Sampling Plan as specified in Attachment C and a Quality Assurance Project Plan as specified in Attachment D.

For ARARs, the Demonstration of Compliance Plan shall:

a. specify the statute;
b. specify the citation of the ARAR;
c. identify if the ARAR is state or federal;
d. summarize the requirements of the ARAR;
e. specify in detail all activities that shall be conducted to comply with the ARAR; and,
f. specify in detail all activities that shall be conducted to demonstrate compliance with the ARAR.

When sampling and analysis is conducted to demonstrate compliance, the Demonstration of Compliance Plan shall specify:

a. sampling locations;
b. sampling frequency;
c. sampling methods;
d. analytical methods;
e. quality assurance and quality control activities; and
e. statistical analysis and/or modeling and/or other data interpretation techniques.

Landfill Cap: The Demonstration of Compliance Plan shall include all of the construction quality assurance testing required to demonstrate that the NTCRA was properly implemented. The construction quality assurance component in the Demonstration of Compliance Plan shall include, at a minimum; (1) checklists for establishing that the required tests and inspections were performed; (2) a standard operating procedures for all field and laboratory tests; (3) the quality assurance and quality control plan for all field and laboratory tests; and (4) erosion and sediment control plans. The construction quality assurance component of the Demonstration of Compliance Plan shall be based upon the following guidance documents: Construction Quality Assurance for Hazardous Waste Land Disposal Facilities, (EPA 530-SW-86-031, October 1986; and "Technical Guidance Document Quality Assurance and

Quality Control for Waste Containment Facilities" (EPA/540/R-93/182, September 1993).

The Demonstration of Compliance Plan shall include the installation of any additional water table aquifer groundwater monitoring wells that are necessary to evaluate the effectiveness of the NTCRA. In particular, any monitoring wells that will be decommissioned as a result of the NTCRA construction shall be replaced by a new well in a suitable location.

Surface Waters: The Demonstration of Compliance Plan shall specify the method by which any surface water point source discharge shall be evaluated.

Air: As part of the Air Section of the Demonstration of Compliance Plan, the Respondents shall specify the methods by which initial compliance with the VT Air Pollution Control Regulations shall be determined. The Demonstration of Compliance Plan shall also specify the method by which the ambient air shall be evaluated after the construction of the cap is complete to demonstrate that the landfill gas does not pose an unacceptable risk (an excess cancer risk outside the 10^{-4} to 10^{-6} risk range or a non-carcinogenic hazard index greater than 1) to the maximum exposed individuals as specified in Section IV.D of this SOW. This shall include the calculation of the exposure point concentration for each of the potentially exposed individuals based upon the average and maximum concentrations for each contaminant detected in the ambient air monitoring. The data shall be presented in a format that shall allow EPA to perform a risk assessment for the air pathway. The Demonstration of Compliance Plan shall describe the model that shall be used to develop the exposure point concentrations, if necessary.

Collected Leachate and Groundwater: The Demonstration of Compliance Plan shall specify the method by which compliance with the requirements and policies specified in Section IV.D. of this SOW shall be determined, including but not limited to, periodic evaluations to determine whether the collected leachate and ground water are RCRA hazardous wastes. The Plan shall identify the receiving facility and back-up facilities for any hazardous substances, pollutants, or contaminants transported off-site. The Plan shall also identify the process for receiving EPA approval prior to the Respondents' use of an off-site facility.

7. INSTITUTIONAL CONTROL PLAN

Within 90 days of the effective date of the Consent Decree the Settling Defendants shall submit to EPA and VTDEC an Institutional Control Plan. This plan shall specific the institutional controls that will be implemented at the Site and a schedule for the implementation of the Institutional Control Plan. At a minimum, the institutional controls shall include a deed restriction on the Site property to prevent any use of the property that would interfere with or reduce the effectiveness of the NTCRA or any future response actions. The deed restriction shall also prevent future use of the groundwater under the Site.

B. DESIGN PROJECT MEETINGS

The Respondents and their Contractor shall periodically meet with EPA and the VTDEC during the design phase to discuss the status of the design, present the results of any investigations, and discuss any issues associated with the development of design.

At least one week prior to each such periodic meeting, the Respondents shall submit to EPA and the VTDEC: (i) an agenda for the meeting; (ii) a summary of the issues that will be discussed; and (iii) any supporting information, including any specific information required for the meeting as detailed below. The following is a list of mandatory meetings to be held during the design phase:

1. DESIGN KICK-OFF MEETING

As required by Attachment A, the Respondents shall schedule a design kick-off meeting. The purpose of this meeting is to allow the EPA, VTDEC, and Respondent design teams to meet.

2. VTDEC Meeting

As required by Attachment A, the Respondents shall schedule a meeting with the VTDEC to discuss the issues relating to the potential discharge of the collected leachate to the Bennington POTW, the discharge of the groundwater diverted by the isolation trench, and the process for determining the type of gas management system. The Respondents shall invite EPA to this meeting.

3. CONCEPTUAL DESIGN MEETING

As required by Attachment A, the Respondents shall hold a Conceptual Design Meeting. During the Conceptual Design Meeting, the Respondents shall give a presentation of the Work Plan for pre-Design Studies to address the gas sampling required in Section IV.A, test borings for the upgradient diversion system, landfill settlement, leachate treatability analysis, and the conceptual design of the selected NTCRA based on any completed pre-design investigations and the Conceptual Design Letter Report.

4. 100% DESIGN MEETING FOR LEACHATE COLLECTION SYSTEM

As required by Attachment A, the Respondents shall hold a 100% design meeting for the leachate collection system. At this meeting the Respondents shall present the 100% design for these components of the NTCRA. The Respondents shall also describe the results of the pre-design studies.

5. INTERMEDIATE DESIGN MEETING

As required by Attachment A, the Respondents shall hold a Intermediate Design Meeting. During the Intermediate Design Meeting, the Respondents shall present the intermediate design. The Respondents shall present the material submitted in the Intermediate Design Letter Report and identify any changes made since the conceptual design.

6. 100% NTCRA DESIGN MEETING

There shall be two 100% NTCRA Design Meetings. The first meeting shall occur no later than the submittal date of the 100% NTCRA Design. The Respondents shall provide an overview of the design and identify any major changes from the intermediate design. The second meeting shall be held no later than fourteen days after the Respondents' receipt of EPA comments regarding the 100% NTCRA Design. During this meeting, the Respondents shall present any issues that have arisen from comments received on the 100% NTCRA Design and options for resolving the issues.

7. DEMONSTRATION OF COMPLIANCE PLAN MEETING

During this meeting, the Respondents shall present any issues that have arisen from comments received from EPA and VTDEC on the Demonstration of Compliance Plan and options for resolving the issues. This meeting may be combined with the second 100% NTCRA Design Meeting, but in any event shall be held no later than twenty-one days after the receipt of EPA comments on the Demonstration of Compliance Plan.

EPA and/or the Respondents may also schedule additional meetings as necessary to discuss any issues that arise during design.

VI. NTCRA IMPLEMENTATION

The Respondents shall implement the final design for the selected NTCRA as described in the Action Memorandum and this SOW that meets the performance standards specified in the Action Memorandum and Section IV of this SOW. This section describes the Respondents' responsibilities for conducting the NTCRA, submitting deliverables, and conducting project meetings during implementation of the NTCRA.

A. DELIVERABLES

The Respondents shall submit the following deliverables to EPA and the VTDEC during implementation of the NTCRA, pursuant to the schedule in Attachment A. Any modification of the schedule in Attachment A is subject to EPA approval, after a reasonable opportunity for review and comment by VTDEC. Each submitted deliverable shall require EPA Approval or Respondents' Certification, whichever applies, pursuant to the schedule in Attachment A and the procedures in Section XIII of the Consent Decree.

1. NTCRA IMPLEMENTATION SCHEDULE

In accordance with the schedule (Attachment A), the Respondents shall submit a NTCRA Implementation Schedule for **EPA Review and Approval**, after reasonable opportunity for review and comment by the VTDEC. The NTCRA Implementation Schedule shall identify all major milestones for completion of the NTCRA including the commencement and completion of construction and the schedule for demonstrating compliance according to the approved Demonstration of Compliance Plan. The NTCRA Implementation Schedule shall also identify the

projected key construction dates including the initiation and completion date of each component of the multi-layer cap. The NTCRA Implementation Schedule shall also identify the projected dates of the Progress Meetings conducted during the NTCRA implementation, including those required pursuant to Section VI.B of this SOW.

2. HEALTH AND SAFETY PLAN

In accordance with the Schedule set forth in Attachment A to this SOW, the Respondents shall submit a General Health and Safety Plan to EPA and VTDEC. A site-specific Health and Safety Plan addressing NTCRA construction activities shall be submitted by the Respondents prior to on-site construction activities. The general and site-specific Health and Safety Plans shall each be submitted with **Respondents' Certification**, and shall conform to requirements of Attachment B to this SOW.

3. NTCRA IMPLEMENTATION PROGRESS REPORTS

On the 15th calendar day of each month during implementation of the NTCRA, and until EPA approval of the Completion of Removal Action Report, the Respondents shall submit Progress Reports to EPA and the VTDEC. The Progress Reports shall be submitted with **Respondents' Certification**. The reports shall summarize all activities that have been conducted in the month preceding the Progress Report, and those planned for the next two months. The Progress Reports shall also:

a. identify the percent of NTCRA construction completed;

b. identify any problems encountered and/or changes to the schedule;

c. summarize the results of all sampling and tests and all other data received by the Respondents;

d. include photographs of the site activities. Photographs shall be labeled with the date, brief description of the activity, weather conditions and direction/orientation of the photograph; and

e. include the results of any monitoring conducted according to the Demonstration of Compliance Plan described in Section V.B.4 of this SOW.

4. WINTER STABILIZATION PLAN

By October 30th of each field season prior to the approval of the Post-Removal Site Control Plan, the Respondents shall submit a Winter Stabilization Plan to EPA and VTDEC. This plan shall describe the practices and procedures that will be used by the Respondents to prevent erosion of the landfill and excessive sediment discharge to the surface water and wetlands.

5. POST-REMOVAL SITE CONTROL PLAN

In accordance with the schedule set forth in Attachment A to this SOW, the Respondents shall submit a Post-Removal Site Control Plan ("PRSC Plan") for **EPA Review and Approval**, after reasonable opportunity for review and comment by the VTDEC. The PRSC Plan shall ensure the long-term, continued effectiveness of each component of the NTCRA. The PRSC Plan shall address, at a minimum, the following:

a. periodic evaluation of the stability of the cover system;

b. periodic assessment of the leachate collections system, groundwater collection trench, and gas collection system;

c. periodic sampling of the leachate;

d. a description of normal operations and maintenance;

e. a description of potential operational problems;

f. a description of routine process monitoring and analysis or the purposes of system performance;

g. a description of contingency operation and monitoring;

h. an operational safety plan;

i. a description of equipment;

j. annual operation and maintenance budget;

k. record keeping and reporting requirements;

n. the ability of the cap to adequately control landfill gas;

o. the ability of the cap to prevent erosion and resist settlement;

p. the ability of the cap to divert surface water; and

q. the impact of the cap and slurry wall or interceptor trench on wetlands.

6. COMPLETION OF REMOVAL ACTION REPORTS

In accordance with the schedule set forth in Attachment A to this SOW, the Respondents shall submit the Completion of Removal Action and Demonstration of Compliance Report (jointly, the "Completion of Removal Action Report") for **EPA Review and Approval**, after reasonable opportunity for review and comment by the VTDEC. The Completion of Removal Action Report shall be submitted in two phases including, first, an Interim Completion of Removal Action Report and second, a Final Completion of Removal Action Report.

a. The Interim Completion of Removal Action Report shall include, at a minimum:

(1) a synopsis of the work defined in the SOW and the 100% NTCRA Design, and a synopsis of all work actually performed;

(2) an explanation of any modifications to work in the SOW and the 100% NTCRA Design, and why such modifications were necessary to implement the NTCRA;

(3) drawings and specifications for all components of the NTCRA; and

(4) a final inspection checklist.

b. The Final Completion of Removal Action Report shall include the categories of information specified in section 300.165 of the NCP (OSC Reports). In addition, the Final Completion of Removal Action Report shall follow EPA guidance for a Remedial Action Report, OSWER Directive 9355.0-39FS, June 1992, and shall include, at a minimum:

(1) all the data and information necessary to demonstrate compliance according to the approved Demonstration of Compliance Plan;

(2) a certification that the NTCRA is operational and functional as designed, that no further modifications are necessary to meet the performance standards, and that no unacceptable air releases are occurring or are expected to occur;

(3) a detailed explanation as to how the Respondents addressed each of ARARs;

(4) the final plans and specification for the NTCRA;

(5) a description of the methods (i.e., statistical analysis) utilized to evaluate the data upon which the Final Completion of Removal Action Report is based; and

(6) the conclusions of the data evaluation;

B. PROJECT MEETINGS

The Respondents and their contractors shall periodically meet with EPA and the VTDEC during implementation of the NTCRA to discuss the status of the project, present the results of any investigations, and discuss any issues that arise. At least one week prior to each such meeting, the Respondents shall submit to EPA and the VTDEC an agenda for the meeting, a summary of the issues that will be discussed and any supporting information. The following is a list of mandatory meetings that shall be conducted by the Respondents:

1. CONSTRUCTION MEETINGS

Unless otherwise agreed by EPA and VTDEC, during the construction period, the Respondents and their construction contractor(s) shall meet **MONTHLY** with EPA and VTDEC regarding the progress and details of construction .

2. SUBSTANTIAL COMPLETION INSPECTION MEETING

In accordance with the schedule set forth in Attachment A to this SOW, the Respondents shall schedule and conduct a Substantial Completion Inspection Meeting at the Site. The Substantial Completion Inspection Meeting shall include EPA, VTDEC, and the Respondents' Project Coordinator and technical consultant.

3. FINAL INSPECTION MEETING

In accordance with the schedule set forth in Attachment A to this SOW, the Respondents shall schedule and conduct a Final Inspection Meeting at the Site. This Final Inspection Meeting shall include participants from all parties involved in the NTCRA, including but not limited to the Respondents and their contractors, EPA and the State.

EPA, and/or VTDEC, and/or the Respondents may also schedule additional meetings as necessary to discuss any issues that arise during implementation of the NTCRA.

VII. POST-REMOVAL SITE CONTROL

The Respondents shall initiate Post-Removal Site Control upon completion of construction of the NTCRA and EPA approval, after a reasonable opportunity for review and comment by VTDEC, of the Post-Removal Site Control Plan.

Progress Reports shall be submitted throughout the period of Post-Removal Site Control ("PRSC"). PRSC Progress Reports shall contain a list of all PRSC activities that were performed in the time period since the previous PRSC Progress Report, and those PRSC activities that will be performed in the time period until the next PRSC Progress Report. In addition, PRSC Progress Reports shall include the results of any PRSC tests or evaluations completed since the last report.

PRSC reports shall be submitted quarterly for the first two years following approval of the PRSC plan by EPA, after a reasonable opportunity for review and comment. Thereafter, PRSC reports shall be submitted annually in November of each year. The PRSC reports shall include a discussion of the condition of the NTCRA components and shall identify any corrective measures that have been or need to be installed. In particular, the condition of the landfill vegetative cover and surface water control/drainage systems shall be discussed.

VIII. MONITORING

EPA and VTDEC intend to perform monitoring at the Site to evaluate the effect of the NTCRA on the Site media (groundwater, surface water, sediment, soil, and air) and intend to initiate such monitoring after EPA approval of the Completion of Removal Action Report. Subsequent to EPA approval of the Completion of Removal Action Report, EPA intends to undertake monitoring activities during years 1-10 and the State of Vermont intends to undertake such monitoring during years 11-30. The monitoring of the implemented removal action is intended to verify that the removal action is achieving the performance standards and the removal action objectives. The monitoring of the removal action is also intended to provide an assessment of the extent of Site contamination and changes in contaminant concentrations over time.

ATTACHMENT A
NTCRA SCHEDULE

* Requires EPA Approval
** Requires Respondents' Certification

Deliverable/Meeting	Due Date
Kick-off meeting between EPA, VTDEC, and Design Contractor	Held on Nov. 22, 1996
**Design Progress Reports	15th calendar day of each month until EPA approval of 100% NTCRA Design
Meeting with VTDEC to discuss POTW discharge/air controls	Held on Dec. 12, 1996
Submit **Conceptual Letter Report to EPA and VTDEC	Submitted January 13, 1997
Conceptual Design Meeting	Held January 16, 1997
Monthly Project Mtg.	To be set by EPA
submit draft *Final Design of the leachate collection system to EPA and VTDEC	submitted March 4, 1997
Final Design Meeting for Leachate Collection	held March 14, 1997
Monthly Project Meetings	To be set by EPA
Submit **Intermediate Design Letter Report for Landfill Cap, Surface Drainage System, and Gas Management System to EPA and VTDEC	submitted March 4, 1997
Intermediate Design Meeting	held March 14, 1997
Institutional Controls Plan	within 90 days of the effective date of the CD
Monthly Project Meetings	To be set by EPA
submit *100% NTCRA Design of Landfill Cap, Surface Drainage System, and Gas Management System, Groundwater Isolation System, Sediment Consolidation, and Demonstration of Compliance Plan to EPA and VTDEC; Also submit revised 100% Leachate Collection System Design	*April 18, 1997
*NTCRA Implementation Schedule	to be submitted as part of the 100% NTCRA Design
100% NTCRA Design and Demonstration of Compliance Plan Meeting	by May 6, 1997
Second 100% Design Meeting	within 21 days after receipt of EPA comments on the 100% NTCRA Design
**Health and Safety Plan for Construction Activities	within 30 days after submittal of 100% Design
**NTCRA Implementation Progress Reports	15th calendar day of each month after EPA approval of 100% NTCRA Design until approval of the Completion of Removal Action Report
Construction Meetings	Once per month of during NTCRA construction activities
*Post-Removal Site Control Plan	July 15, 1997

*Winter Stabilization Plan	By 30th of October of each year until EPA approval of the Post-Removal Site Control Plan
*Interim Completion of Removal Action Report	30 days prior to Final Inspection Meeting
Substantial Completion Meeting	Within 18 months of effective date of the CD
*Final Completion of Removal Action Report	Within 120 days of the Substantial Completion Inspection
Final Inspection	no later than October 15, 1998
Post-Removal Site Control Progress Reports	Quarterly for the 1st two years after approval of PRSC Plan(to be submitted in March, June, September, and December of each year), annual thereafter (to be submitted in November of each year)

ATTACHMENT B

DELIVERABLES REQUIRING RESPONDENTS' CERTIFICATION

I. PROGRESS REPORTS

Design Progress Reports shall include all of the requirements listed in Section V.A.1 of this SOW. NTCRA Implementation Progress Reports shall include all of the requirements listed in Section VI.A.3 of this SOW.

II. MEETING LETTER REPORTS

The Conceptual Design Letter Report shall include, at a minimum, the information described in Section V.B.1. of this SOW. The Intermediate Design Letter Report shall include, at a minimum, the information described in Section V.B.2 of this SOW.

ATTACHMENT C

FIELD SAMPLING PLAN COMPONENT OF DEMONSTRATION OF COMPLIANCE PLAN

The overall objectives of the Field Sampling Plan (FSP) are as follows:

1. to document specific objectives, procedures, and rationales for fieldwork and sample analytical work;

2. to ensure that sampling and analysis activities are necessary and sufficient; and

3. to provide a common point of reference for all parties to ensure the comparability and compatibility of all objectives and the sampling and analysis activities.

The following critical elements of the FSP shall be described for each sample medium, as necessary, (e.g., ground water, surface water, soil, sediment, air, and biota) and for each sampling event:

1. sampling objectives (There can be many objectives for example engineering related (well yields, zone of influence), demonstration of attainment, five year review, etc.);

2. data quality objectives, including data uses and the rationale for the selection of analytical levels and detection limits (see Data Quality Objectives Development Guidance for Uncontrolled Hazardous Waste Site Remedial Response Activities; OSWER Directive 9355.07, March 1987); Also, Guidance for Data Useability in Risk Assessment; EPA/540/G-90-008, October 1990.

3. site background update, including an evaluation of the validity, sufficiency, and sensitivity of existing data;

4. sampling locations and rationale;

5. sampling procedures and rationale and references;

6. numbers of samples and justification;

7. numbers of field blanks, trip blanks, and duplicates;

8. sample media (e.g., ground water, surface water, soil, sediment, air, and buildings, facilities, and structures, including surfaces, structural materials, and residues);

9. sample equipment, containers, minimum sample quantities, sample preservation techniques, maximum holding times;

10. instrumentation and procedures for the calibration and use of portable air, soil-, or water-monitoring equipment to be used in the field;

11. chemical and physical parameters in the analysis of each sample;

12. chain-of-custody procedures must be clearly stated (see EPA NEIC Policies and Procedures Manual, EPA 330/9-78 001-R) May 1978, revised May 1986;

13. procedures to eliminate cross-contamination of samples (such as dedicated equipment);

14. sample types, including collection methods and if field and laboratory analyses will be conducted;

15. laboratory analytical procedures, equipment, and detection limits;

16. equipment decontamination procedures;

The FSP must establish the framework for all anticipated field activities (e.g., sampling objectives, evaluation of existing data, standard operating procedures) and contain specific information on each round of field sampling and analysis work (e.g., sampling locations and rationale, sample numbers and rationale, analyses of samples). During the NTCRA, the FSP shall be revised as necessary to cover each round of field or laboratory activities. Revisions or a statement regarding the need for revisions shall be included in each deliverable describing all new field work.

The FSP shall include provisions requiring notification of EPA and the VTDEC, at a minimum, four weeks before field sampling events. The Respondents shall provide EPA and VTDEC at least one week notice for non-analytical engineering analysis samples. The FSP shall also allow split, replicate, or duplicate samples to be taken by EPA (or their contractor personnel), VTDEC, and by other parties

authorized by EPA. At the request of EPA or VTDEC, the Respondents shall provide these samples in appropriately pre-cleaned containers to the government representatives. Identical procedures shall be used to collect the Respondents' samples and the parallel samples unless otherwise specified by EPA or VTDEC. The following guidance documents shall be followed in developing the FSP, including:

1. Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA (OSWER Directive 9355.3-01, EPA/540/G-89/004, October 1988);

2. Data Quality Objectives for Remedial Response Activities Development Process, EPA/540/G-87/003, (OSWER Directive 9355.0-7B, March 1987);

3. Data Quality Objectives for Remedial Response Activities, example scenario: RI/FS Activities at a site with contaminated Soil and Ground Water (OSWER Directive 9355.0-7B, EPA/540/G-87/002, March 1987);

4. Test Methods for Evaluating Solid Waste, Physical/Chemical Method (EPA Pub. SW-846, Third Edition);

5. Analytical methods as specified in CFR 40 CFR Parts 136, 141.23, 141.24 and 141.25 and Agency manuals documenting these methods; and

6. Statement of Works for Inorganic and Organic Analyses, EPA Contract Laboratory Program.

7. Guidance for Data Useability in Risk Assessment, EPA/540/G-90-008, October 1990.

8. Ecological Assessment of Hazardous Waste Sites: A field and Laboratory Reference, EPA/600/3-89013, March 1989.

ATTACHMENT D

QUALITY ASSURANCE PROJECT PLAN
COMPONENT OF DEMONSTRATION OF COMPLIANCE PLAN

The Quality Assurance Project Plan (QAPjP) shall document in writing site-specific objectives, policies, organizations, functional activities, and shall specific quality assurance/quality control activities designed to achieve the data quality objectives (DQOs) of the NTCRA. The QAPjP developed for this project shall document quality control and quality assurance policies, procedure, routines, and specifications. All project activities throughout the NTCRA shall comply with the QAPjP. All QAPjP and sampling and analysis objectives and procedures shall be consistent with Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans (EPA, 1983 - EPA, QAMS- 005/80, 1980). All analytical methods shall be consistent with applicable EPA analytical protocols and methods.

The 16 basic elements of the QAPjP plan are:

1. title page with provision for approval signatures of principal investigators;

2. table of contents;

3. project description;

4. project organization and responsibility;

5. quality assurance objectives for measurement data, in terms of precision, accuracy, completeness, representativeness, and comparability;

6. sampling procedures;

7. sample custody;

8. calibration procedures and frequency;

9. analytical procedures, which must be EPA approved or equivalent methods;

10. data reduction, validation and reporting;

11. internal quality control checks and frequency;

12. performance and system audits and frequency;

13. preventive maintenance procedures and schedules;

14. specific routine procedures to be used to assess the precision, accuracy, and completeness of data and to assess specific measurement parameters involved;

15. corrective action; and

16. quality assurance reports to management.

As indicated in EPA/QAMS-005/80, the above list of essential elements must be considered in the QAPjP for the NTCRA. If a particular element is deemed not relevant to the project, the reasons for such determination must be provided.

Information in a plan other than the QAPjP may be cross-referenced clearly in the QAPjP provided that all objectives, procedures, and rationales in the documents are consistent, and the reference material fulfills the requirements of EPA/QAMS-005/80. Examples of how this cross-reference might be accomplished can be found in the Data Quality Objectives for Remedial Response Activities, Development Process, EPA/540/6-87/003 (OSWER Directive 9355.0-7B), March 1987 and the Data Quality Objectives for Remedial Response Activities, Example Scenario, EPA/540/G-87/004 (OSWER Directive 9355.0-7B), March 1987. EPA-approved analytical methods or alternative methods approved by EPA shall be used, and their corresponding EPA-approved guidelines shall be applied when they are available and applicable.

The QA/QC for any laboratory used during the NTCRA shall be included in the QAPjP. When this work is performed by a contractor to the private party, each laboratory performing chemical analyses shall meet the following requirements:

1. be approved by the State Laboratory Evaluation Program, if available;

2. have successful performance in one of EPA's National Proficiency Sample Programs (i.e., Water Supply or Water Pollution Studies or the State's proficiency sampling program);

3. be familiar with the requirements of 48 CFR Part 1546 contract requirements for quality assurance; and

4. have a QAPjP for the laboratory including all relevant analysis. This plan shall be referenced as part of the contractor's QAPjP.

The Respondents shall certify that all validation of data was performed by an independent person according to Region I's Laboratory Data Validation Functional Guidelines for Evaluating Organic and Inorganic Analyses (amended as necessary to account for the differences between the approved analytical methods for the project and the Contract Laboratory Procedures (CLP) procedures). These approved methods shall be contained in the QAPjP. The independent person shall not be the laboratory conducting the analyses and should be a person familiar with EPA Region I data validating procedures. The independent person performing the validation shall insure that the data packages are complete and, all discrepancies have been resolved if possible, and the appropriate data qualifiers have been applied. The Respondents shall keep the complete data package and make it available to EPA and the VTDEC on request. The complete data package must include the following:

- Narrative stating method used and explanation of any problems
- Tabulated summary forms for samples, standards and QC
- Raw data for samples, standards and QC
- Sample preparation logs and notebook pages
- Sample analysis logs and/or notebook pages
- Chain of custody sample tags
- An example calculation for every method per matrix.

ATTACHMENT E

GENERAL REQUIREMENTS FOR THE TECHNICAL SPECIFICATIONS COMPONENT OF THE NTCRA DESIGN

The general requirements section of the technical specification shall describe how the Respondents will manage the project to complete the NTCRA as required under the SOW and the Order. As part of the technical specifications the Respondents shall require the following tasks:

1. Provide for the security of government and private property on the Site;

2. Prevent unauthorized entry to the Site, which might result in exposure of persons to potentially hazardous conditions;

3. Establish the location of a field office for on-site activities;

4. Provide contingency and notification plans for potentially dangerous activities associated with the NTCRA;

5. Monitor airborne contaminants released by Site activities which may affect the local populations;

6. Communicate to EPA, VTDEC, and the public the organization and management of the NTCRA, including key personnel and their responsibilities;

7. Provide a list of Respondents' contractors and subcontractors and description of their activities and roles;

8. Provide for the proper disposal of materials used and wastes generated during the NTCRA (e.g., drill cutting, extracted ground water, protective clothing, disposable equipment). These provisions shall be consistent with the off-site disposal requirements of CERCLA § 121(d)(3), RCRA, and applicable state laws. The Respondents, or their authorized representative, or another party acceptable to EPA and VTDEC shall be identified as the generator of wastes for the purpose of regulatory or policy compliance;

9. Provide a description of the project staff and communication strategy;

10. Provide the mechanism for identifying and notifying EPA and VTDEC of non-conformance with the design and field change requests; and

11. Provide traffic controls and community notification strategy.

APPENDIX C

NRD Statement of Work

APPENDIX C

WETLAND RESTORATION STATEMENT OF WORK
BURGESS ROAD PROPERTY, BENNINGTON, VERMONT

I. INTRODUCTION AND PURPOSE

This NRD Statement of Work (SOW), as Appendix C to the non-time-critical removal action (NTCRA) Consent Decree at the Bennington LF Superfund Site, Bennington, Vermont, defines the response activities and deliverables that the Performing Settling Defendants shall perform/submit in order to implement the NRD Restoration required under the Consent Decree. The activities described in this NRD SOW are based upon the US Fish & Wildlife Service (FWS) Memorandum (Memorandum) dated 16 January 1997 which addresses performance objectives in restoring the Burgess Road Site wetland as compensation for natural resources damages at the Bennington Landfill. Specifically, the Memorandum addresses three specific goals:

- restore natural landscape and natural qualities (e.g.: access to vernal pools by wildlife),
- prevent artificial flow of water to the site from off-site sources, and
- reduce artificial wetland drainage.

These goals are supplemented by additional activities in wetlands education and protection to produce a comprehensive approach to the restoration of the Burgess Road Site.

II. DEFINITIONS

The following definitions shall apply to this NRD SOW:

A. All definitions provided in Section IV of the Consent Decree are incorporated herein by reference.

B. "Conservation Covenant" shall mean the agreement by the Town to prohibit the future development of the Protected Area of the Burgess Road Site.

C. "Protected Area" shall mean the area so depicted on the Site Plan attached as Figure 2 to the NRD SOW.

D. "Restoration Certification Report" shall mean the report to be prepared by the Performing Settling Defendants' wetlands consultant and provided to FWS for its Review and Approval pursuant to Section V.A.3 of this NRD SOW.

E. "Site" shall mean the land and premises owned by the Town known as Lot 24, Burgess Road, Bennington, Vermont, as shown on the Site Plan attached as Figure 2 to this NRD SOW.

F. "Town" shall mean the Town of Bennington.

G. "FWS" shall mean the United States Fish and Wildlife Service, an Agency of the United States Department of Interior, and any successor departments, agencies or instrumentalities thereof.

H. "FWS Approval" or "FWS Review and Approval" shall mean the procedures specified in Section XI of the Consent Decree, except each reference to EPA shall read as a reference to FWS and each reference to the State shall read as a reference to the State, acting through VTDEC.

I. "VTDEC" shall mean the Vermont Department of Environmental Conservation, a department of the Vermont Agency of Natural Resources.

J. "Wetlands Education Committee" shall mean the Committee established pursuant to Section IV.D of the NRD SOW.

III. BURGESS ROAD SITE WETLAND RESTORATION

Based upon the Memorandum, the following are listed components of the NRD SOW for restoration of the Burgess Road site (see Figure 1 for site locus and Figure 2 for reference) which shall be performed by the Performing Settling Defendants:

- Remove cistern sidewalls and bottoms at Cisterns 4 & 5
- Remove cistern sidewalls at Cisterns 1, 2, 3 and 6
- Remove fence posts and fencing at Cisterns 1 - 6
- Close off a leaking water valve near Cistern 2
- Fill the artificial drainage way, which exits from Cistern 3, at a point about 200 feet northwest of Cistern 3, an area coincident with the overhead utility line
- Perform cistern - specific grading of side slopes, filling and plantings
- Conduct regularly-scheduled performance monitoring with reporting to State and Federal designated contacts
- Organize, support and coordinate the activities of a Wetlands Education Committee whose goal is developing an educational outreach program to compliment the site restoration work. Program will include interpretive signs and trails.
- Restrict future development of the Protected Area through a Conservation Covenant.

IV. PERFORMANCE STANDARDS

The Performing Settling Defendants shall implement the NRD SOW in compliance with the Consent Decree and the performance standards listed below:

A. CISTERN RESTORATION

Construction-related wetland restoration activities will be required to minimize the total affected area while creating a substrate that will support a wetland habitat similar to that found in surrounding areas. The following tasks (refer to Figure 2 for orientation) are designed to achieve restoration of the Burgess Road Site, with minimal disturbance:

1. Site access shall be from the dirt road along the eastern property boundary. Cistern 6 shall be accessed from the trail which intersects the dirt road near the northeastern property corner. Cisterns1, 2, 3 (watercourse backfilling only), 4 and 5 shall be accessed from a point along the dirt road proximate to Cistern 4. Cistern 3 shall be accessed from along the southern property boundary.

2. Areas to be disturbed shall be surrounded by soil and erosion control measures (i.e., silt fence and/or staked haybales). These controls shall be maintained until upgradient areas are stabilized.

3. Work will make use of frozen or seasonally dry ground surface conditions whenever possible.

4. Limit the amount and size of heavy equipment required to complete project. Equipment shall be track-mounted whenever possible. Wooden and/or geotextile mats shall be used in areas of deep organic deposits (i.e., Cisterns 3 and 6).

5. Limit materials to be removed to typically include only cistern sidewalls and fencing (cistern bottom removal will only be required at Cisterns 4 and 5).

6. Block all piping encountered during excavation activities. This will avoid artificial impacts to the mitigated area.

7. Install hand-dug 1.5 in. I.D. PVC observation wells at Cisterns 1, 2, 3 and 6 to observe static water levels for final grade determination. FWS Approval of cistern-specific final grades will be required prior to backfilling of cisterns.

8. Backfill former cisterns with approximately 1 ft to 2 ft of an appropriate soil type and grade to surrounding areas. This will maintain the low lying "vernal" nature of the former cistern and will allow for the following:

   a. hydrologic connection with downgradient areas
   b. greater faunal access
   c. increased potential for hydrophitic diversity
   d. restoration of former topography
   e. use of surrounding native soils as fill material, whenever possible

9. Develop and implement a planting plan for Cistern 3. This plan will include type and amount of species to be introduced to the area along with a schedule for implementation. This plan will require FWS Approval prior to implementation.

10. Seasonally monitor the revegetation of restored wetland areas. If, following two years of monitoring, it is determined by FWS that vegetative plantings are required for this area, then a FWS-approved planting plan shall be implemented. This plan will include type and amount of species to be introduced to the area along with a schedule for implementation.

11. General requirements for accomplishing proper cistern restoration follow:

a. Access each cistern from upland areas whenever possible.

b. Install and maintain proper soil and erosion control measures (i.e., silt fence and/or staked haybales) to protect areas downgradient of the construction area.

c. Minimize disturbance of surrounding upland and wetland vegetation whenever possible.

d. Utilize equipment, road materials and perform work during weather conditions that will minimize the creation of "ruts" in the ground surface.

e. Temporarily dewater cisterns prior to beginning earthwork activities and maintain dewatered conditions during construction (i.e., all earthwork shall be completed "in-the-dry").

f. Excavate all concrete and wire mesh associated with sidewalls and fence posts and remove from covenant area.

g. Block all piping leading to or from cisterns.

The specific requirements for restoration at each individual cistern follow:

1. Cistern 1

Cistern 1 is an approximately 23 ft by 18 ft structure located within the northern edge of a coniferous forest (refer to Figure 2). A shrub swamp is located to the north of the structure. The topography locally rises to the east and west of the structure and is generally level to the north and south. An intermittent watercourse flows north into Cistern 1. This watercourse extends approximately 80 ft south of the southern portion of the structure.

a. Earthwork Requirements

Following completion of general requirements previously listed, the Performing Settling Defendants shall complete the following tasks:

1. Install hand-dug 1.5 in. I.D. PVC observation well on north side of cistern to observe static water level.

2. Fill bottom of cistern with a minimum 1 ft of "clean" soil and grade side slopes to match surrounding topography. The uppermost layer (approximately 7 in.) must contain mineral soils with an organic-carbon content of between 2.5 and 12 percent (1). A maximum effort will be made to utilize surrounding soils to fill the cistern where feasible. Final cistern grade shall be subject to FWS review and approval.

3. Once area becomes stabilized, remove downgradient soil and erosion control measures.

b. Vegetative Requirements

Due to the shaded nature of this area and limited vegetation in the upgradient intermittent watercourse, this area should be allowed to naturally revegetate with native species. However, if FWS determines that unacceptable revegetation with an unwanted opportunistic species such as Common Reed (*Phragmites australis*) or Purple Loosestrife (*Lythrum salicaria*) has occurred, then selective removal of this vegetation shall be undertaken by the Performing Settling Defendants pursuant to a FWS-approved replanting plan.

If, following two years of monitoring, it is determined by FWS that vegetative plantings are required for this area, then a FWS-approved planting plan shall be implemented. This plan will include type and amount of species to be introduced to the area along with a schedule for implementation.

2. Cistern 2

Cistern 2 is an approximately 23 ft by 24 ft structure located within the western edge of a coniferous forest (refer to Figure 2). A shrub swamp and shallow marsh is located to the south of the structure. An intermittent watercourse which drains to Cistern 1 is located approximately 25 ft north of the structure. The topography locally rises to the east, west and north of the structure and is generally level to the south of the structure. An intermittent watercourse flows north into Cistern 2. This watercourse extends approximately 30 ft south of the southern portion of the structure.

a. Earthwork Requirements

Following completion of general requirements described previously, the Performing Settling Defendants shall complete the following tasks:

1. Install hand-dug 1.5 in. I.D. PVC observation well on north side of cistern to observe static water level.

2. Excavate area between northern edge of Cistern 2 and southern end of intermittent watercourse to Cistern 1 to provide a preferred pathway for overflow drainage of Cistern 2.

3. Fill bottom of cistern with a minimum 1 ft of "clean" soil and grade side slopes to match surrounding topography. The uppermost layer (approximately 7 in.) must contain mineral soils with an organic-carbon content of between 2.5 and 12 percent (1). A maximum effort will be made to utilize surrounding soils to fill the cistern where feasible. Final cistern grade shall be subject to FWS review and approval.

4. Once area becomes stabilized, remove downgradient soil and erosion control measures.

b. Vegetative Requirements

Due to the shaded nature of this area and limited vegetation in the upgradient intermittent watercourse, this area should be allowed to naturally revegetate with native species. However, if FWS determines that unacceptable revegetation with an unwanted opportunistic species such as Common Reed (*Phragmites australis*) or Purple Loosestrife (*Lythrum salicaria*) has occurred, then selective removal of this vegetation shall be undertaken by the Performing Settling Defendants pursuant to the FWS-approved replanting plan.

If, following two years of monitoring, it is determined by FWS that vegetative plantings are required for this area, then a FWS-approved planting plan shall be implemented. This plan will include type and amount of species to be introduced to the area along with a schedule for implementation.

3. Cistern 3

Cistern 3 is an approximately 40 ft by 66 ft structure located within a shrub swamp and shallow marsh area near the southern property boundary (refer to Figure 2). The topography is generally level surrounding the structure. An intermittent watercourse flows east into Cistern 3 from a small excavated pond located approximately 80 ft southwest of the structure. An artificially created intermittent watercourse drains Cistern 3 to the north-northeast. The best upland access to Cistern 3 appears to be along the southern property boundary. Geotextile mats should be utilized for all work surrounding Cistern 3.

a. Earthwork Requirements

Following completion of general requirements previously discussed, the Performing Settling Defendants shall complete the following tasks:

1. Install hand-dug 1.5 in. I.D. PVC observation wells on the east and west sides of the cistern to observe static water levels.

2. Fill bottom of cistern and small excavated pond with a minimum 2 ft of "clean" soil and grade side slopes to match surrounding topography. The uppermost layer (approximately 1 ft) must contain organic soils with an organic-carbon content of greater than 12 percent (1). A maximum effort will be made to utilize surrounding soils to fill the cistern where feasible. Final cistern grade shall be subject to FWS review and approval.

3. Fill artificial watercourse that drains Cistern 3 and surrounding wetland areas beginning at a point approximately 200 ft. northwest of Cistern 3 (below the overhead utility line) to a point approximately 100 ft.

downstream (i.e., north). Refer to Figure 2 for location of portion of stream to be filled. This filling can be done using existing bank excavation materials.

4. Once area becomes stabilized, remove downgradient soil and erosion control measures.

b. Vegetative Requirements

1. Partially replant side slopes of former cistern with surrounding native vegetation. This will be accomplished by removing small plots (approximately 4 ft by 4 ft plots) of vegetation from the surrounding wetland and replanting in the area mitigated. Each plot of removed vegetation must maintain a minimum separation distance of 25 ft. The planting plan will be submitted for FWS Approval. This plan will include type and amount of species to be introduced to the area along with a schedule for implementation.

2. Partially replant central low lying portion of former cistern with cattail species (*Typhaceae)* indigenous to the marsh areas of the surrounding wetland. Plantings will be made from onsite sources or from a FWS-approved outside source.

3. If FWS determines that unacceptable revegetation with an unwanted opportunistic species such as Common Reed (*Phragmites australis*) or Purple Loosestrife (*Lythrum salicaria*) has occurred, then selective removal of this vegetation shall be undertaken by the Performing Settling Defendants pursuant to a FWS-approved replanting plan.

4. If, following two years of monitoring, it is determined by FWS that additional vegetative plantings are required for this area, then a FWS-approved planting plan shall be implemented. This plan will include type and amount of species to be introduced to the area along with a schedule for implementation.

4. Cistern No. 4

Cistern 4 is an approximately 24 ft by 66 ft structure located along the southeastern edge of a coniferous forest (refer to Figure 2). The topography locally rises to the east, south and north of the structure and is generally level to the west of the structure. An intermittent watercourse flows from Cistern 4 to the west. This watercourse extends approximately 50 ft west of the western portion of the structure. Cistern 5 is located approximately 20 ft to the northeast.

a. Earthwork Requirements

Following completion of general requirements previously described, the Performing Settling Defendants shall complete the following tasks:

1. Remove concrete bottom of cistern.

2. Grade side slopes to match surrounding topography where necessary.

3. Once area becomes stabilized, remove downgradient soil and erosion control measures.

b. Vegetative Requirements

Due to the shaded nature of this area and limited vegetation in the upgradient intermittent watercourse, this area should be allowed to naturally revegetate with native species. However, if FWS determines that unacceptable revegetation with an unwanted opportunistic species such as Common Reed (*Phragmites australis*) or Purple Loosestrife (*Lythrum salicaria*) has occurred, then selective removal of this vegetation shall be undertaken by the Performing Settling Defendants pursuant to a FWS-approved replanting plan.

If, following two years of monitoring, it is determined by FWS that vegetative plantings are required for this area, then a FWS-approved planting plan shall be implemented. This plan will include type and amount of species to be introduced to the area along with a schedule for implementation.

5. Cistern 5

Cistern 5 is an approximately 25 ft by 24 ft structure located within the southeastern edge of a coniferous forest (refer to Figure 2). Ponded areas extend approximately 10 ft to 15 ft north and east of the structure. The topography locally rises to the west and south of the structure and is generally level to the north and east of the structure. This area appears to be internally drained with no apparent intermittent watercourse for overflow drainage. Cistern 4 is located approximately 20 ft southwest of Cistern 5.

a. Earthwork Requirements

Following completion of general requirements previously described, the Performing Settling Defendants shall complete the following tasks:

1. Remove concrete bottom of cistern.

2. Grade side slopes to match surrounding topography where necessary.

3. Once area becomes stabilized, remove downgradient soil and erosion control measures.

b. Vegetative Requirements

Due to the shaded nature of this area and limited vegetation in the upgradient intermittent watercourse, this area should be allowed to naturally revegetate with native species. However, if FWS determines that unacceptable

revegetation with an unwanted opportunistic species such as Common Reed (*Phragmites australis*) or Purple Loosestrife (*Lythrum salicaria*) has occurred, then selective removal of this vegetation shall be undertaken by the Performing Settling Defendants pursuant to a FWS-approved replanting plan.

If, following two years of monitoring, it is determined by FWS that vegetative plantings are required for this area, then a FWS-approved planting plan shall be implemented. This plan will include type and amount of species to be introduced to the area along with a schedule for implementation.

6. Cistern 6

Cistern 6 is an approximately 34 ft by 20-30 ft structure located within the northern edge of a coniferous forest (refer to Figure 2). A shrub swamp is located to the north of the structure. The topography locally rises to the south and east of the structure and is generally level to the north and west. Ponded water was observed in low lying areas north and west of the structure. A trail extending from a dirt road along the eastern property boundary to the centrally located reservoir passes very close to the northern edge of Cistern 6. This trail may provide the best access to this area. Geotextile mats shall be utilized for work surrounding Cistern 6.

a. Earthwork Requirements

Following completion of general requirements previously described, the Performing Settling Defendants shall complete the following tasks:

1. Install hand-dug 1.5 in. I.D. PVC observation well on north and south sides of cistern to observe static water levels.

2. Fill bottom of cistern with a minimum 1 ft of "clean" soil and grade side slopes to match surrounding topography. The uppermost layer (approximately 7 in) must contain mineral soils with an organic-carbon content of between 2.5 and 12 percent (1). A maximum effort will be made to utilize surrounding soils to fill the cistern where feasible. Final cistern grade shall be subject to FWS Review and Approval.

3. Once area becomes stabilized, remove downgradient soil and erosion control measures.

b. Vegetative Requirements

Due to the shaded nature of this area and limited vegetation in the upgradient intermittent watercourse, this area should be allowed to naturally revegetate with native species. However, if FWS determines that unacceptable revegetation with an unwanted opportunistic species such as Common Reed (*Phragmites australis*) or Purple Loosestrife (*Lythrum salicaria*) has occurred, then selective removal of this vegetation shall be undertaken by the Performing Settling Defendants pursuant to a FWS-approved replanting plan.

If, following two years of monitoring, it is determined by FWS that vegetative plantings are required for this area, then a FWS-approved planting plan shall be implemented. This plan will include type and amount of species to be introduced to the area along with a schedule for implementation.

B. PIPELINE VALVE

A water supply pipeline known as the "South End Line" reportedly bisects the site from roughly the southeastern property corner to the reservoir located along Burgess Road (refer to Figure 2). This pipeline apparently crosses the mitigation area closest to Cistern 2. A broken pipeline valve was located approximately 80 ft southwest of Cistern 2. This valve was observed discharging water under pressure to the ground surface. Since this is an unnatural condition at the Burgess Road Site, the following measure will be undertaken:

1. Permanently repair/remove valve so that water discharge is stopped.

C. INSTITUTIONAL CONTROLS

The Town will prohibit development of the Protected Area through the Conservation Covenant.

D. WETLANDS EDUCATION COMMITTEE

The Performing Settling Defendants will establish a Wetlands Education Committee made up of interested citizens, local school representatives, conservation group members and advised by a wetlands consultant provided by the Performing Settling Defendants. The Committee, with input from the FWS, will assist the Performing Settling Defendants in deciding upon educational outreach efforts for the restoration work, as well as designing appropriate interpretive signage and access trails for the site to enhance the public's enjoyment of the wetlands. The composition of the Wetlands Education Committee will be subject to FWS Approval. The Performing Settling Defendants will financially support the workings of the Committee by providing 1) postage, 2) office supplies, 3) places to meet, 4) a wetlands consultant to work with and help guide the Committee, 5) secretarial support, 6) monies for up to 50 interpretive signs, and 7) materials and labor for trail making.

The Committee will stay in force for a minimum of 3 years after completion of all onsite restoration activities and will meet semiannually to 1) monitor the wetland's overall recovery from field activities, in conjunction with the wetlands consultant, 2) observe revegetation and initiate wetland enhancements, subject to the FWS Review and Approval, and 3) organize and sponsor educational outreach.

V. DELIVERABLES DURING RESTORATION

The Performing Settling Defendants shall submit semiannual reports to the FWS and VTDEC which report performance to date on the NRD SOW tasks and include recommendations for further actions, as

appropriate, for FWS Approval. These reports are in addition to the Wetlands Education Committee meeting announcements and minutes.

A. DELIVERABLES

The Performing Settling Defendants shall submit the following deliverables to the FWS for Approval during implementation and monitoring of the restoration, pursuant to the described schedule. Any modification of the schedule shall be subject to FWS Approval.

1. SEMIANNUAL PROGRESS AND MONITORING REPORTS

On the 15th calender day of the designated months (January 1998, July 1998, January 1999, July 1999, January 2000, July 2000, January 2001, July 2001), for a duration of 3 years after completion of site restoration construction activities, the Performing Settling Defendants shall submit Progress and Monitoring Reports. The Reports shall summarize all activities that have been conducted in the preceding time period and project ahead those activities planned in the next reporting period, and shall include revegetation success monitoring and unwanted opportunistic vegetation monitoring components.

2. WETLANDS EDUCATION COMMITTEE NOTICES/MINUTES

The Performing Settling Defendants agree that the Committee will send out meeting notices with attached Agenda at least 30 calender days prior to a meeting of the Wetlands Education Committee. Minutes will also be distributed within 30 days from date of any meeting. Included in the Minutes will be list of attendees, summary of discussion items, agreed-to action items, copies of any information developed or distributed at the meeting, and schedule for upcoming Committee actions and projected meetings.

3. CISTERN 3 PLANTING PLAN

The Performing Settling Defendants shall prepare a planting plan for the Cistern 3 area and submit plan for FWS Approval.

4. PLANTING/REPLANTING PLAN

If required by FWS, the Performing Settling Defendants shall prepare a planting plan to augment plantings, or replanting plan to remove unwanted opportunistic species, and replant area. These plans shall be submitted for FWS Approval within 10 days of requirement.

5. RESTORATION CERTIFICATION REPORT

The Performing Settling Defendants will submit a Restoration Certification Report signed by the wetlands consultant working with the Wetlands Education Committee for FWS Review and Approval when restoration goals for the site

have been met. It is anticipated that this Certification will be submitted no earlier than 3 years after completion of construction activities at the Burgess Road Site, and no later than 4 years from such date. The Certification by the wetlands consultant will address the specific requirements of this SOW, together with overall goals from the FWS 16 January 1997 Memorandum as described in the Introduction to this NRD SOW. At FWS request, the Performing Settling Defendants will schedule a final inspection meeting at the Burgess Road Site. Upon FWS Approval of the Certification Report, FWS will so notify the Performing Settling Defendants in writing.

VI. RESTORATION IMPLEMENTATION SCHEDULE

Figure 3 sets forth the implementation schedule for the three major components of work described in this NRD SOW. Basically, the work is phased for the following rationale:

- begin educational steps (set up Committee) immediately to coordinate construction steps with educational goals;
- implement the Conservation Covenant; and,
- phase construction at favorable times (dry or frozen conditions).

The Performing Settling Defendants will identify the participants in the Wetlands Education Committee within 30 days of entry of the Consent Decree or by 1 July 1997, whichever is later. This information will be reported to the FWS in the first Progress Report due following such date. The early startup of the Committee allows the Committee members to become knowledgeable about the restoration measures to be undertaken and provide guidance about access routes, revegetation etc. Also, this early startup allows the Committee to develop some pre- and post- restoration photos and/or data, so this information can be integrated into the educational and progress reporting components of the restoration.

The restoration work on the cisterns shall begin no later than fall 1997, with a start date goal of 1 October 1997, subject to weather restrictions. If inclement weather is predicted for the startup day, the Performing Settling Defendants will notify FWS and VTDEC within 3 days of mobilization that restoration work will be delayed until 24 hours after cessation of inclement weather. Renotice to the FWS and VTDEC of work startup will be given 24 hours prior to remobilization. If extremely wet seasonal conditions indicate that startup should be delayed from a 1 October 1997 start date goal, the Performing Settling Defendants will send a letter by 15 September 1997 requesting a delay with stated reasons and suggesting an alternative start date. FWS shall, within 7 work days, Review and Approve, or Disapprove the delay request. All cistern restoration work shall be concluded no later than March 1998.

The Conservation Covenant would be completed by 1 October 1997.

VII. MONITORING

The Performing Settling Defendants will report semiannual progress on the above-described restoration, education and conservation tasks to the FWS and VTDEC. The Performing Settling Defendants, in conjunction with FWS, will inspect the cistern areas at least once before the start of restoration work and twice annually for vegetative growth, diversity, soil erosion, and overall restoration of the vernal pool environment. These inspections will be conducted by a qualified wetland

scientist in conjunction with Wetland Education Committee members, who will develop the results of these inspections as monitoring reports. These monitoring reports will be filed along with the semiannual progress reports described above and will be used to make recommendations for vegetative enhancements, as necessary. These recommendations will be subject to FWS Review and Approval prior to implementation at the Burgess Road Site.

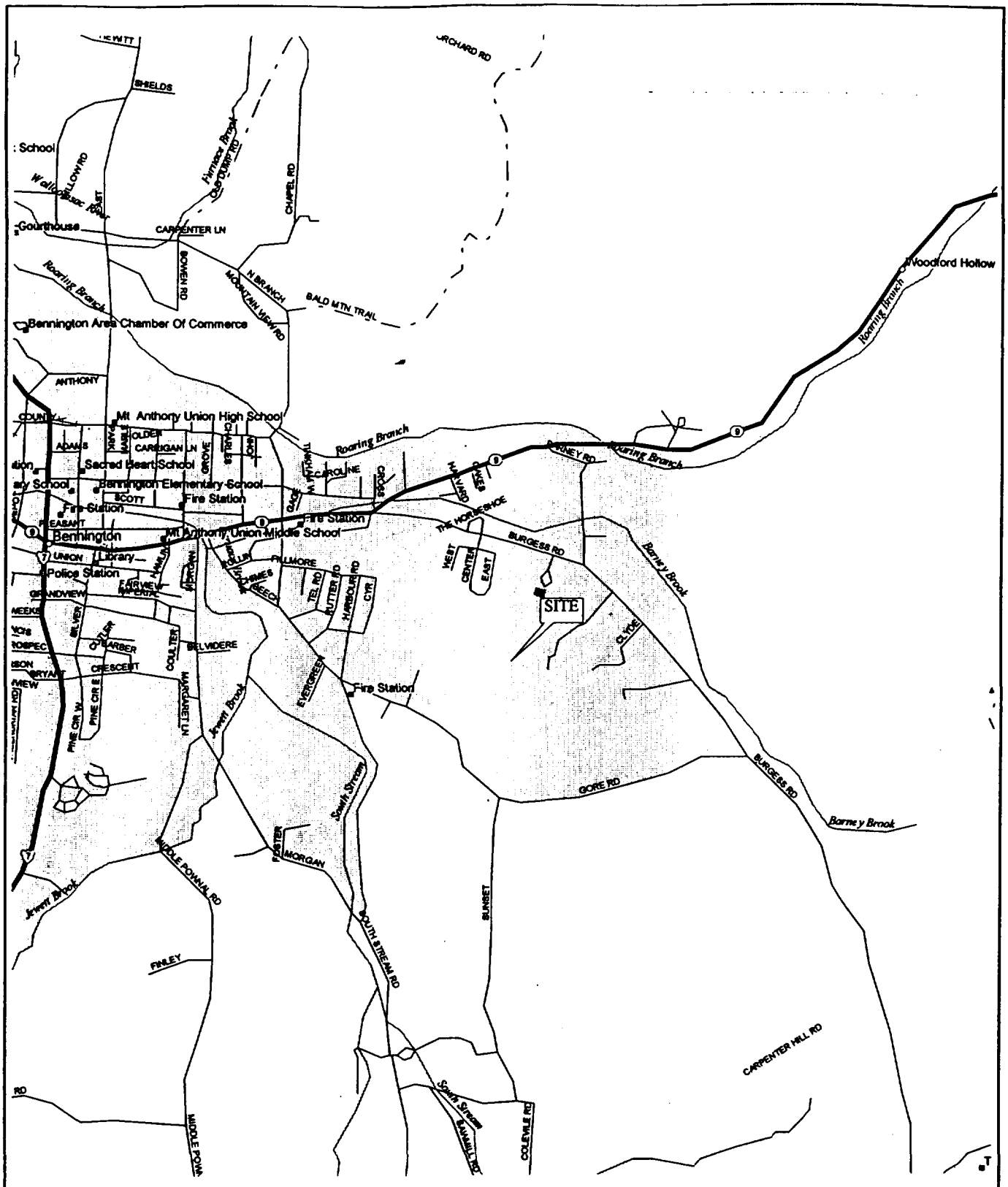
The monitoring reports will also include reports by the Wetlands Education Committee as to progress made on trail development, interpretive signs, educational materials and educational programs for the site.

Reporting will be deemed complete once all tasks described in the NRD SOW have been completed, 3 years of post-construction monitoring has occurred, certification of restoration by the wetlands consultant working with the Wetlands Education Committee, and restoration is deemed complete by the FWS .

REFERENCES

1. "Keys to Soil Taxonomy", Agency for International Development USDA Soil Management Support Services, Third Printing, 1987.

C:\DOCUMENT\60329SOW.WPF:pb-HACT.624


SHIELDS
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Courthouse
CARPENTER LN
CHAPEL RD
ORCHARD RD
Furnace Brook
Old Dump Rd
BOWEN RD
N BRANCH
MOUNTAIN VIEW RD
BALD MTN TRAIL
Roaring Branch
Bennington Area Chamber Of Commerce
Woodford Hollow
ANTHONY
Mt Anthony Union High School
Sacred Heart School
Bennington Elementary School
Fire Station
Bennington
Mt Anthony Union Middle School
Library
Police Station
BARNEY RD
THE HORSESHOE
BURGESS RD
SITE
Barney Brook
CLYDE
Fire Station
EVERGREEN
Jewett Brook
South Stream
GORE RD
BURGESS RD
Barney Brook
MIDDLE POWNAL RD
FOSTER
MORGAN
SUNSET
FINLEY
SOUTH STREAM RD
CARPENTER HILL RD
COLEVILLE RD
MIDDLE POWNAL RD
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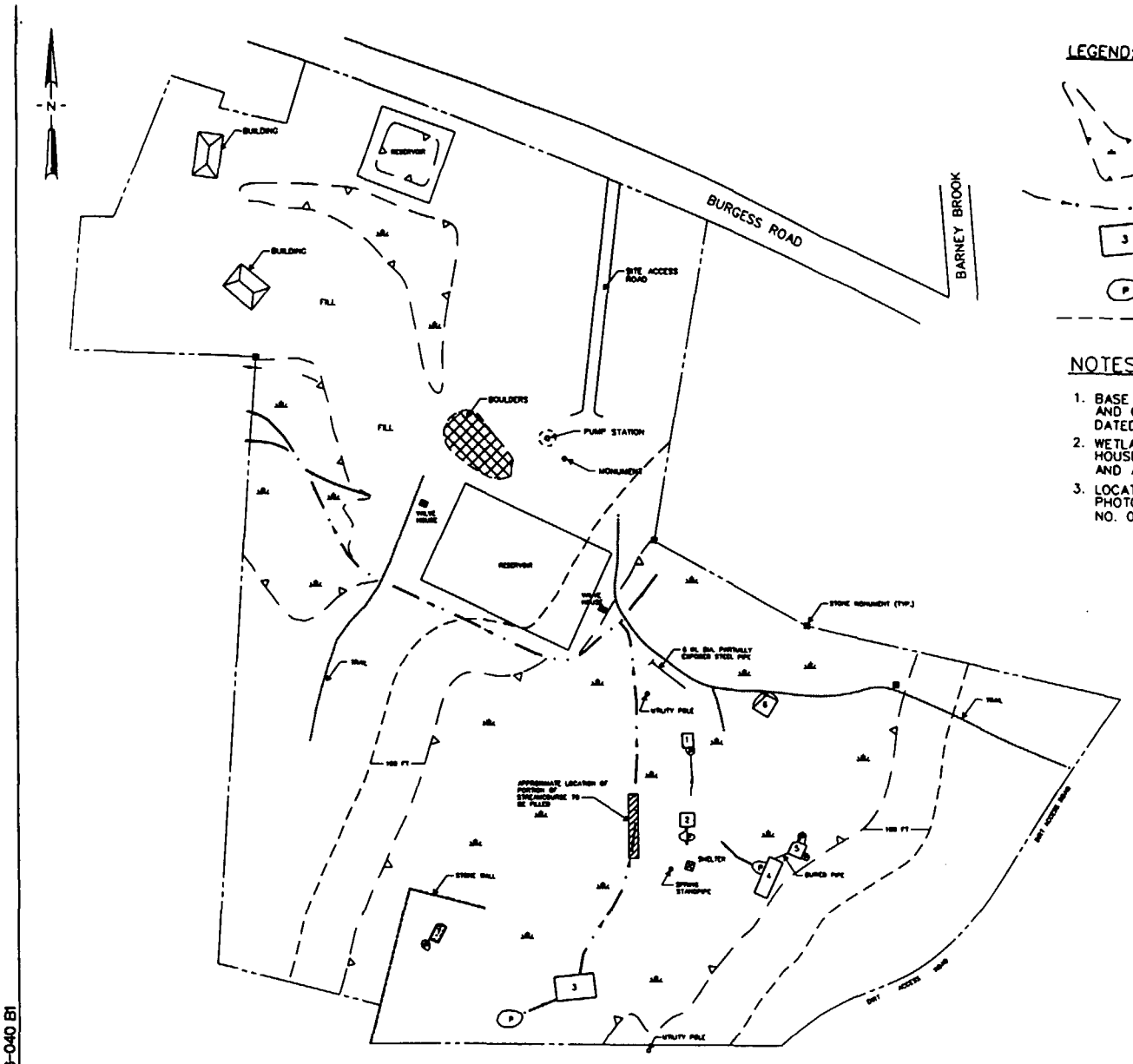
STREET ATLAS USA® 3.0
(800) 452-5931
HALEY & ALDRICH
UNDERGROUND ENGINEERING & ENVIRONMENTAL SOLUTIONS
RESTORATION STATEMENT OF WORK
BENNINGTON LANDFILL
BURGESS ROAD
BENNINGTON, VERMONT
PROJECT LOCUS
APPROX. SCALE: 1:31,250
APRIL 1997
60329-040 A1

FIGURE 1



LEGEND:

WETLANDS BOUNDARY

STREAM COURSE

CAST-IN-PLACE CONCRETE CISTERN (ALL CISTERNS CONTAIN PONDED WATER)

PONDED WATER

PROPOSED BOUNDARY OF PROTECTED AREA

NOTES:

1. BASE PLAN IS A 1 IN. = 104.17 FT. DEED MAP (VERMONT MAP NOS. 098041 AND 098042) PREPARED BY RUSSELL GRAPHICS, CORNING, NEW YORK, DATED 1989.
2. WETLAND BOUNDARIES, CISTERNS, PONDS, UTILITY POLES, PIPING, TRAILS, VALVE HOUSES, STONE WALLS, AND SPRINGS WERE DETERMINED IN THE FIELD BY HALEY AND ALDRICH PERSONNEL BY TAPING FROM EXISTING SITE FEATURES.
3. LOCATION OF RESERVOIRS AND BUILDINGS WERE DETERMINED FROM AN AERIAL PHOTO MAP ENTITLED, "OFFICIAL VERMONT BASE MAP, BENNINGTON EAST, SHEET NO. 096040, SERIES 5000, 1992."

0 60 120
SCALE IN FEET

60356-040 B1

HALEY & ALDRICH
UNDERGROUND ENGINEERING & ENVIRONMENTAL SOLUTIONS

RESTORATION STATEMENT OF WORK
BENNINGTON LANDFILL
BURGESS ROAD
BENNINGTON, VERMONT

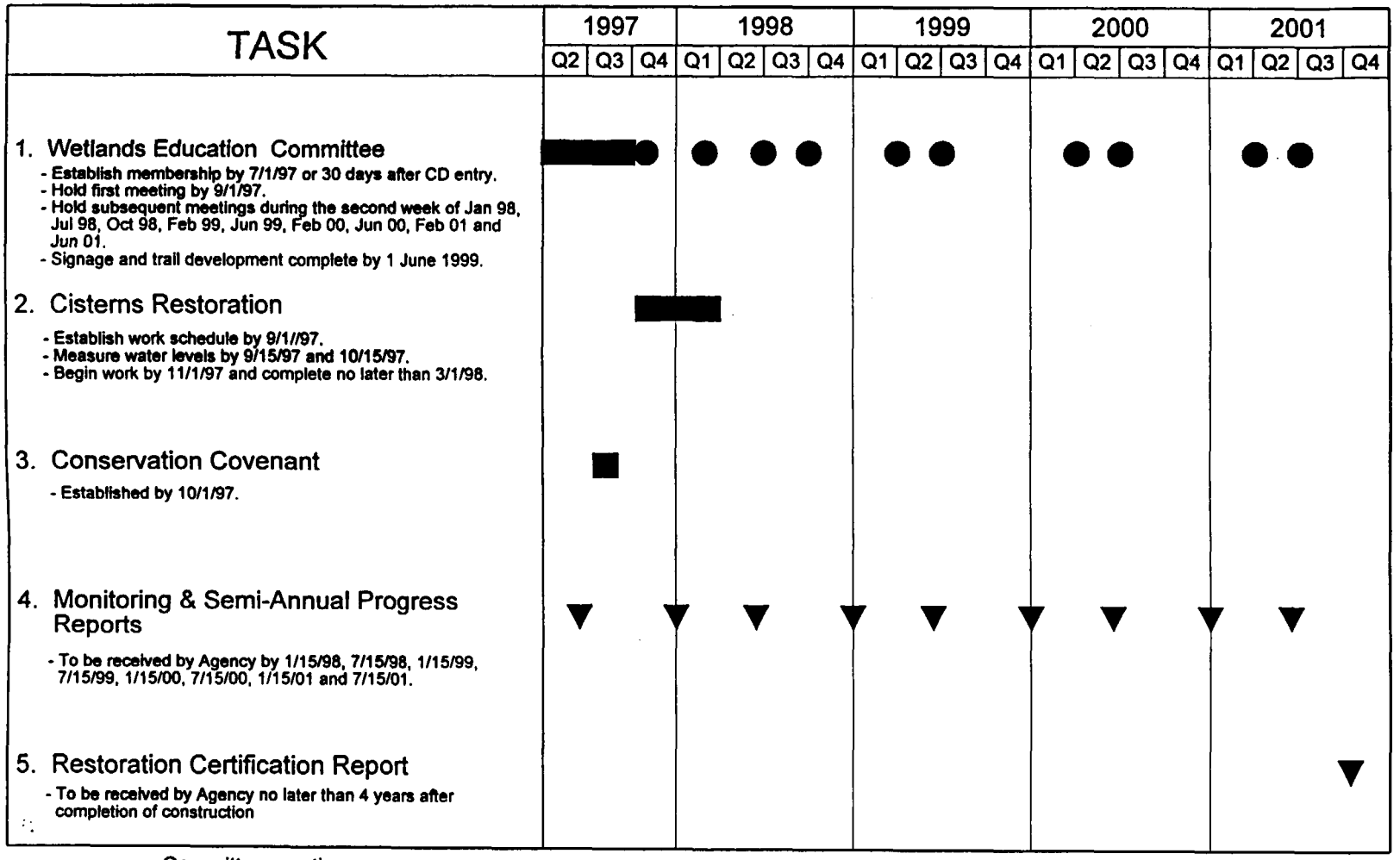
SITE PLAN

SCALE: AS SHOWN

APRI

FIG

60329-040 A2



Note: Assumes final approved SOW by 30 April 1997 and entry of Consent Decree by 1 July 1997. To the extent the Consent Decree is entered after 1 July 1997, the first task (establishment of Wetlands Education Committee) would be completed within 30 days of entry date and each subsequent date would be adjusted accordingly.

HALEY & ALDRICH

UNDERGROUND ENGINEERING & ENVIRONMENTAL SOLUTIONS

RESTORATION STATEMENT OF WORK
BENNINGTON LANDFILL
BURGESS ROAD
BENNINGTON, VERMONT

IMPLEMENTATION SCHEDULE

APRIL 1997

FIGURE 3

APPENDIX D

Map of Bennington Municipal Landfill Superfund Site

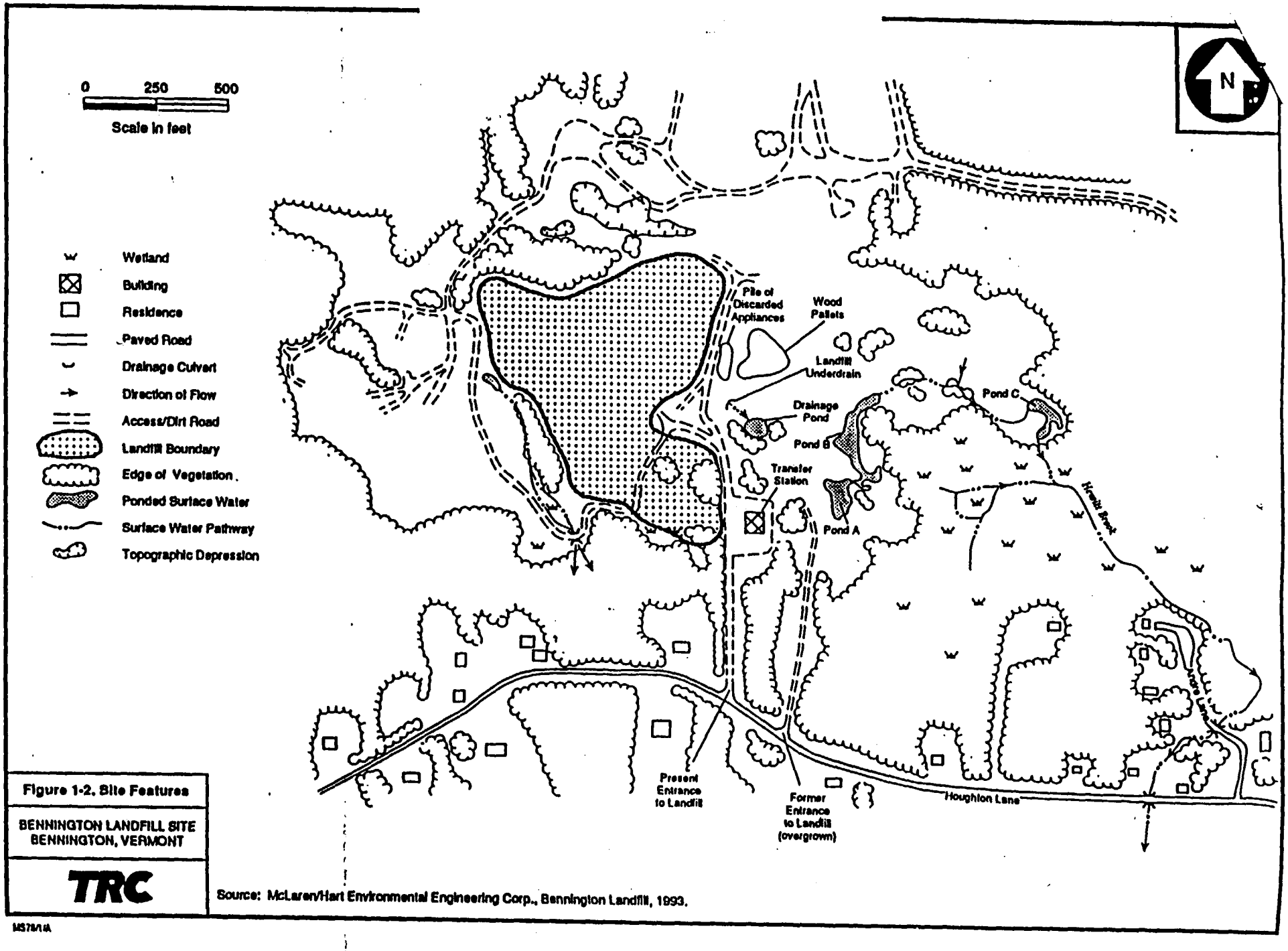


Figure 1-2. Site Features

BENNINGTON LANDFILL SITE
BENNINGTON, VERMONT

TRC

Source: McLaren/Hart Environmental Engineering Corp., Bennington Landfill, 1993.

MS78/1A

APPENDIX E

List of De Minimis Defendants

Add, Inc.

Bennington College

Bennington Iron Works (GCDC)

Chemfab Corporation

Courtaulds Structural Composites, Inc.

Sibley Manufacturing Co., Inc./CLR Corporation

Masco/Schmelzer

Southwestern Vermont Medical Center

Central Vermont Public Service Corporation

Triangle Wire & Cable

H.M. Tuttle Co., Inc.

State of Vermont Agency of Transportation

Vermont Bag & Film, Inc.

U.S. Tsubaki

APPENDIX F

List of Performing Settling Defendants

B.Co. (f/k/a Bijur Lubricating Corp.)

Eveready Battery Company, Inc.

Johnson Controls Battery Group, Inc.

Textron, Inc.

Town of Bennington

APPENDIX G

List of De Minimis Defendants' Payment Amounts

Add, Inc.	$ 61,200
Bennington College	$ 58,200
Bennington Iron Works (GCDC)	$170,000
Chemfab Corporation	$180,000
Courtaulds Structural Composites, Inc.	$250,000
Sibley Manufacturing Co., Inc./CLR Corporation	$178,200
MascoTech Controls, Inc./Schmelzer Corporation	$188,200
Southwestern Vermont Medical Center, Inc.	$ 73,200
Central Vermont Public Service Corporation	$ 68,200
Triangle Wire & Cable, Inc.	$188,200
H.M. Tuttle Co., Inc.	$ 77,000
State of Vermont Agency of Transportation	$ 73,200
Vermont Bag & Film, Inc.	$ 33,200
U.S. Tsubaki, Inc.	$178,200